

# The Solicitors' Journal

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# THE SOLICITORS' JOURNAL



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## CURRENT TOPICS

### Negligence and Medical Practitioners

If a person who holds himself out as possessing any particular skill is to avoid liability for negligence, he is required to show only that he exercised the skill normally possessed by persons doing that particular work. For example, in *Philips v. William Whiteley, Ltd.* [1938] 1 All E.R. 566, a jeweller undertook to pierce a lady's ears and it was held that he was required to show that in performing this operation he had used the care and skill which was reasonably to be expected of an average jeweller, not a surgeon, performing this operation. The point arose in the much publicised case of *Landau v. Werner*, which we report this week at p. 257, where the plaintiff claimed damages for personal injuries and pecuniary loss sustained by her as a result, *inter alia*, of the negligence of the defendant, a psychiatrist, who was her medical attendant. BARRY, J., gave judgment for the plaintiff as he was satisfied that there was not "a body of opinion" which would have thought it desirable to treat the plaintiff in the way adopted by the defendant. This case reminded us of *Bolam v. Friern Hospital Management Committee* [1957] 1 W.L.R. 582, where it appeared that among those in the medical profession skilled and experienced in electro-convulsive therapy there were two bodies of opinion concerning the use of relaxant drugs and manual control. McNAIR, J., told the jury that the question about which they had to make up their minds was whether the doctor concerned did something which no competent medical practitioner using due care would do, or whether, on the other hand, he acted in accordance with "a perfectly well recognised school of thought." In that case, the jury found in favour of the defendants as they were satisfied that the doctor had acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art. In *Landau v. Werner*, *supra*, Barry, J., came to the opposite conclusion.

### Trial by Battle

THE case of *Williams v. Foley* (1961), *The Times*, 11th March, involved deciding, on conflicting expert evidence, whether or not two antique pistols were genuine "Simeon North" pistols made in about 1815. In the Court of Appeal, HARMAN, L.J., commented that "this is clearly a case to be decided by trial by battle." It is interesting to note that this comment echoes a view already expressed by the same judge. In *Serville v. Constance* [1954] 1 W.L.R. 487, at p. 491, which concerned the claim made by each of two boxers to use the title "Welter-weight Champion of Trinidad," Harman, J. (as he then was), observed that "it occurred to me for the first time during the hearing to regret the desuetude of ordeal by battle as a method of trial." Strictly, of course, this observation was

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inaccurate. One of the features of English law is that its rules do not cease to be binding merely by disuse, even though lengthy. Thus in *Ashford v. Thornton* (1818), 1 B. & Ald. 405, a defendant was held able to resurrect in an appeal of murder the procedure of trial by battle, which was archaic in that it had first been introduced by an ordinance of Henry II's reign and then in practice buried for centuries. The consternation not only of the unwelcome opponent of that defendant but of other potential and reluctant pugilists was such that Parliament intervened. In 1819, statute (59 Geo. 3, c. 46) abolished trial by battle as being "a Mode of Trial unfit to be used." Point is added, however, to Harman, L.J.'s recent comment by the fact that the pistols in question were both alleged and found to be made some four years before the abolition of the procedure he advocated.

### Protection of Tenants

THE sponsors of the Protection of Tenants (Local Authorities) Bill do not, apparently, wholeheartedly agree with the views expressed by LORD GREENE, M.R., in *Shelley v. London County Council* [1948] 1 K.B. 274, and by LORD PORTER on the appeal to the House of Lords [1949] A.C. 56. The learned Master of the Rolls opined that local authorities when acting as housing authorities were, socially, much more responsible than private landlords, and could, one would have thought, be trusted to exercise their powers in a public-spirited and fair way; Lord Porter that they might well be expected to exercise their powers with discretion. The L.C.C. were then held to be entitled to recover possession of what would have been rent-controlled dwellings without showing any of the recognised "grounds"; this by virtue of the exemption then conferred by the Housing Act, 1936, s. 156. Wider exemption has since been conferred by the Housing Repairs and Rents Act, 1954, not only local authorities but housing associations and housing trusts (if subject to the jurisdiction of the Charity Commissioners) being granted exemption; and the object of this Bill is to deprive such landlords of much of their privileges. The dwellings which they let would be brought within the security of tenure provisions of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, s. 3 and Sched. I (a) to (f) if, when proceedings for possession are taken, the rateable value does not exceed £100 in London, £75 elsewhere. There would be exceptions in the case of licensed premises, furnished lettings, and houses let at less than two-thirds of their rateable value; but "combined premises" (of which there must be few) would be within the scope of the measure. Though neither *Shelley v. London County Council*, *supra*, nor *Guinness Trust, etc. v. Cope* [1955] 1 W.L.R. 872, can be said to afford instances of irresponsible or unfair exercise of rights, we consider that there may be a case for making public authorities and housing trusts toe the line when it comes to ejection on such grounds as rent default, nuisance, unauthorised sub-letting and the like.

### Proving an Irish Marriage

CONTINUING uncertainty seems to surround the subject of how one proves a marriage celebrated in the Republic of Ireland. The admissibility in English courts of certified copies of entries in public registers kept in Ireland was, while Ireland remained a part of the United Kingdom, governed by the Evidence Act, 1851, which provides, *inter alia*, that a document admissible in evidence in an Irish court without proof of seal, stamp, or signature authenticating it shall be

similarly admissible in an English court. Proof of marriages contracted in Northern Ireland is still governed by these simple provisions but, after 1922, a marriage celebrated in the Irish Free State had to be proved in English courts as, say, a marriage in Canada. The procedure is laid down in the Evidence (Colonial Statutes) Act, 1907. A copy of the marriage certificate is produced together with a Government printer's copy of the local statute making such a copy admissible in the local court. That statute in Eire was—and remains—the Evidence Act, 1851, for, like much pre-independence legislation, it has never been repealed by the Irish authorities. In 1949, however, Eire ceased to be part of the Commonwealth. Is the above procedure, therefore, inoperative? By s. 3 (2) (a) the Ireland Act, 1949, declares that references in British statutes to H.M. Dominions which would have extended to Eire had it remained part of the Dominions shall nevertheless now continue to extend to Eire. The provisions of the 1907 Act would, therefore, appear still to extend to the Republic and make the manner of proof of an Irish marriage similar to proof of a marriage in a British Dominion. But modern Irish certificates are partly printed in the Irish language and *Brown v. Brown* (1917), 116 L.T. 702, which concerned interpretation of a Gold Coast ordinance, indicates that expert evidence may be needed if the meaning of the document remains obscure. Since evidence by the affidavit of an Irish lawyer is now admissible without leave, this may, therefore, in practice prove to be the most convenient means of establishing the validity of a latter-day marriage in Eire.

### Soliciting in Shop Windows

SINCE the passing of the Street Offences Act, 1959, there has been much discussion as to whether the display by a prostitute of an advertisement in a shop window constitutes an offence under s. 1 (1) of that Act. It would seem that it does. In a recent case before the London Sessions Appeals Committee it appeared that a man inserted a card in a shop window reading: "Half Italian, co-operative, versatile, male model. Ring Hayes . . . Ask for Brian. Available at any time." Section 32 of the Sexual Offences Act, 1956, makes it "an offence for a man persistently to solicit or importune in a public place for immoral purposes," and the appeals committee dismissed the man's appeal against conviction in respect of this offence. We think it would be difficult to criticise this decision and it would seem to follow that a common prostitute inserting a similar advertisement in a shop window would be guilty of soliciting in a public place for the purpose of prostitution within s. 1 (1) of the Act of 1959.

### Sir Leonard Holmes

SIR LEONARD HOLMES, LL.M., J.P., president of The Law Society in 1950, died at his Liverpool home on 9th March at the age of seventy-seven. He had a distinguished legal career and was well known in Liverpool, where he was in practice as a sole principal and had been Clerk of the Peace for that city from 1940 to 1949. Graduating at Liverpool University in 1905, he attained honours before being admitted in 1907. A keen member of the Incorporated Law Society of Liverpool, he became its president in 1930. He was appointed a justice of the peace in 1933. He had served on the Supreme Court Rule Committee, the Magistrates' Courts Rule Committee and the Departmental Committee on the Central Criminal Court for Lancashire, and in 1950 was a joint president of the International Bar Association. He was knighted in 1951.

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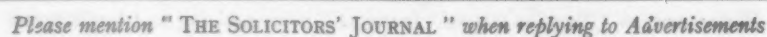
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## PRISONERS OF HISTORY

### THE STREATFEILD REPORT

No one seriously suggests that if we were constructing a system of criminal courts from scratch we would choose the illogical, amorphous and wasteful apparatus which to-day we, for want of a more suitable word, enjoy. Like most other features in our constitution it defies rational analysis but works surprisingly well. The Streatfeild Committee were enjoined in June, 1958, to review the present arrangements (a) for bringing to trial persons charged with criminal offences, and (b) for providing the courts with the information necessary to enable them to select the most appropriate treatment for offenders, and to consider whether, having regard to the desirability of ensuring that cases are brought before the courts and disposed of expeditiously, any changes are required in these arrangements or in those for the dispatch of business by the courts; and to report.

#### Not sufficiently radical

We have criticised the Herbert Report on London Government and the evidence of The Law Society to the Royal Commission on the Police on the ground that they were too radical: we realise that we shall be accused of being querulous because we think that the Streatfeild Report is not radical enough. The committee have accepted the present situation in principle, although it is based on several fallacies. The chief fallacy is that only London deserves courts of justice in permanent session for both criminal and civil business. The second fallacy is that for some reason it is necessary to duplicate administrative machinery. The clerks of the peace in counties and in those boroughs with separate courts of quarter sessions deal adequately with the bulk of criminal cases tried on indictment. Likewise the district registrars deal with the conduct of many civil cases outside London and outside the county court jurisdiction but not with the actual trials. Superimposed on these are the circuit organisations whose

locations are not invariably certain and whose methods of communication are far from infallible. The third fallacy (which to some extent the Streatfeild Committee admit) is that there is some magic method by which offences tried on indictment can be divided between assizes and quarter sessions. By and large sex and violence go to assizes: property goes to sessions. The fourth fallacy is that the administration of criminal justice ought to be carried out by a series of private empires whose interests are defended tenaciously by their respective supporters. The fifth (again admitted in part by the Streatfeild Committee) is that, whereas on the High Court level it is right and proper that judges should deal with both civil and criminal business, on the level of quarter sessions and the county courts they should be kept separate except in so far as county court judges are chairmen or deputy chairmen of quarter sessions.

#### Most important sentence

The sixth is that it is still necessary to hold assizes lasting one or two days at towns within an hour's travelling time of other towns. The most important sentence in the report is on p. 140, towards the end of App. C. It says: "... it seems more sensible and economical for a few cases to travel rather a long way than that an assize court, with all its personnel, should go specially to a town and find virtually nothing to do."

The terms of reference of the Streatfeild Committee were limited and within this confined space they have produced some admirable interim recommendations which ought to be put into effect as soon as possible, without prejudice to the evolution of a more rational system. In future articles we shall consider some of the committee's recommendations and then the shape of a national system of courts, civil and criminal, outside London.

P. ASTERLEY JONES.

## "IN DEFENCE OF DAMAGES AND JURIES"

A FOOTNOTE BY HENRY CECIL

In his interesting article on this subject in your issue of 10th March (p. 225) Mr. Fraser Harrison makes one mistake and one false assumption when he refers to the chapter on Accidents in "Not Such an Ass."

(1) It is not suggested in that chapter that there should be national insurance for accidents in the home or (except, of course, to the extent that this already exists) at work. On the contrary, accidents in the home are expressly distinguished from accidents on the road.

(2) Although the notorious conduct of juries in dealing with motorists charged with driving while under the influence of drink is referred to, it is not suggested in that chapter or in anything else which the author has written that the right of a motorist or of any other person charged with a criminal offence to be tried by a jury should be cut down. However unfortunate it may be that juries are too lenient in a particular class of case, the author agrees wholeheartedly with Mr. Fraser Harrison's view that the right to trial by a jury is an invaluable right which should most certainly be preserved and in no way reduced.

### ROAD TRAFFIC AND ROADS IMPROVEMENT ACT, 1960

The Road Traffic and Roads Improvement Act, 1960 (Commencement No. 2) Order, 1961 (S.I. 1961 No. 327 (C.3)), brings into operation on 20th March the Road Traffic and Roads Improvement Act, 1960, ss. 11 (miscellaneous amendments as to local authorities' parking places and traffic schemes) and 13 (1) to (7), (9) and (10) (additional powers of local authorities in connection with provision of off-street parking places).

### PUBLIC DEBATE

A Public Debate has been organised by "Justice" between Professor A. L. Goodhart, K.B.E., Q.C., and Edward Clarke, Q.C. (Chairman: The Rt. Hon. Lord Tucker) on the subject: "Should the Court of Criminal Appeal have the power to order a retrial?" on Wednesday, 29th March, at 6 p.m., in The Law Society's Common Room, Chancery Lane, W.C.2.

This debate is open to the general public and no tickets are required or being issued.

## ADMINISTRATION WITH A FOREIGN ELEMENT—II

### RULES GOVERNING GRANTS OF REPRESENTATION

In the previous article we advised Mr. Lewis that the will by which he was appointed sole executor had been validly executed, for the purpose of disposing of movable property in this country, according to the law of the testator's domicile at the date of his death, but that the will was invalid for the purpose of disposing of immovable property, which term, we noticed, included leaseholds and certain other property connected with land.

Our thoughts now turn to the procedure for getting a grant or grants in respect of the various parts of the testator's estate. We find, for instance, that the testator owned leaseholds and mortgage debts in England and also various stocks and shares; he also held securities in Scotland, U.S.A., Spain and Australia. Furthermore, the will has no residuary clause and only purports to dispose of some of the estate, including the English leaseholds but not the English mortgage debts. In view of these and other complications Mr. Lewis is dubious about whether or not to accept office as executor. We shall therefore endeavour to explain to him what steps must be taken, first, on the assumption that he accepts office, and then on the assumption that he renounces.

#### Proving the will

Accordingly we turn to the question of proving the will. This, as we have seen, is only valid to dispose of movable estate in England; consequently the appointment in it of Mr. Lewis as executor is only really an appointment of an executor to deal exclusively with movable property. (It gives Mr. Lewis no title to immovable estate.) He can, therefore, administer the deceased's personalty in this country, except mortgage debts and leaseholds (and land held on trust for sale if there is any in the estate). As to all other property a separate grant or grants of administration will have to be obtained. We will return to this problem in a moment. Proviso (a) to r. 29 of the Non-Contentious Probate Rules, 1954, says that:—

"Probate of any will which is admissible to proof may be granted:—

- (i) if the will is in the English or Welsh language to the executor named therein;
- (ii) if the will describes the duties of a named person in terms sufficient to constitute an executor according to the tenor of the will, to that person."

In these cases (and Mr. Lewis clearly falls within the first) the grant of probate can be made by the English court without any application to a registrar of the Principal Registry for an order for a grant (as is provided for in the rest of r. 29). Under r. 6 (4), Mr. Lewis will have to swear to the deceased's foreign domicile in the oath leading to the grant, and, from 1st March, 1961, by r. 6 (5) of the 1954 Rules as amended by S.I. 1961 No. 72, a statement as to the country in which the deceased died domiciled may be included in the grant. This will not, incidentally, enable Mr. Lewis to re-seal the grant in Scotland because the Confirmation of Executors (Scotland) Act, 1858, s. 14, only permits the re-sealing of grants in respect of personal estate in Scotland where the deceased died domiciled in England. (It will be remembered that there is similar provision for re-sealing an English grant in such circumstances in Northern Ireland under the Probate and Letters of Administration (Ireland) Act, 1857, s. 94.) Rule 18 provides that:—

"Where evidence of the law of a country outside England is required on any application for a grant, the affidavit of any person who practises, or who has practised, as a barrister or advocate in that country and who is conversant with its law may be accepted by the Registrar unless the deponent is a person claiming to be entitled to the grant or his attorney;

Provided that the Registrar . . . may in special circumstances accept the affidavit of any other person who does not possess the qualifications required by this rule if the Registrar is satisfied that by reason of such person's official position or otherwise he has knowledge of the law of the country in question."

Under this rule we might try, for instance, to get a certificate of the deceased's foreign law from the relevant ambassador in this country under the seal of the embassy (see *In the Goods of Klingemann* (1862), 3 Sw. & Tr. 18). Mr. Lewis will also, of course, have to swear an Inland Revenue affidavit, but as the estate duty problems in this particular case are considerable we shall deal with these in a separate article. So much for the steps which Mr. Lewis will have to take if he decides to prove the will.

#### Grant for deceased's remaining property in England

Now what about the rest of the deceased's property in this country? This consists of (a) undisposed of movable property and (b) immovable property consisting of freeholds, leaseholds and mortgage debts. As to both these classes of property the deceased died intestate, unless, of course, we hear by and by that he left another will, possibly in another country, validly appointing somebody to deal with it. The question now is to whom the English court will make a grant or grants of representation in respect of this property. First, it is well to remember that under s. 162 (1) (b) of the Supreme Court of Judicature (Consolidation) Act, 1925, as amended by the Administration of Justice Act, 1925, s. 7, if by reason of the insolvency of the estate or any other special circumstances it appears to be necessary or expedient to appoint as administrator someone other than the person entitled to a grant, the court may in its discretion appoint any person, and limit the grant in any way it thinks fit. This provision gives the court a very wide general jurisdiction which may well be of assistance in the present case. (See, as an illustration of its function, *In the Goods of Kaufman* [1952] P. 325.) Subject to this, r. 29 of the Non-Contentious Probate Rules, 1954, provides that where the deceased died domiciled outside England an application may be made to a registrar of the Principal Registry for an order for a grant:—

"(a) to the person entrusted with the administration of the estate by the court having jurisdiction at the place where the deceased died domiciled;

(b) to the person entitled to administer the estate by the law of the place where the deceased died domiciled;

(c) if there is no such person as is mentioned in (a) or (b) or if in the opinion of the Registrar the circumstances so require, to such person as the Registrar may direct;

(d) if, by virtue of s. 160 of the Supreme Court of Judicature (Consolidation) Act, 1925 (which requires at least two administrators or a trust corporation to administer the estate if there is a minority or life interest) a grant is required to be made to, or if the Registrar in his discretion considers that a grant should be made to, not less than two administrators, to such person as the Registrar may direct jointly with any other such person as is mentioned in para. (a) or (b) of this rule or with any other person."

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There then follows proviso (a) already quoted above about probate's being granted, if the will is in English or Welsh, to the executor named therein, etc.; and this is followed by a further important proviso (b), namely, that, "When the whole of the estate in England consists of immovable property, a grant limited thereto may be made in accordance with the law which would have been applicable if the deceased had died domiciled in England." Thus r. 29 says, broadly, three things: first the "person entrusted" or the "person entitled" or some other person directed by the registrar may apply for an order for a grant; secondly, a grant may be given to a named executor or executor according to the tenor in a will written in English or Welsh without an order; thirdly, if the only property in England is immovable a limited grant may be made in respect of it to a person entitled under English law under r. 21 (see r. 26 (2)). Unfortunately, this third head cannot be applied in our case under consideration because there is movable as well as immovable property here; consequently application for an order for a grant will have to be made under the first head of r. 29 by the appropriate person or persons, "entrusted," "entitled" or "directed" as above explained. If a person "entrusted" applies for an order an official copy of the foreign grant must accompany his application; if there is no such grant the registrar may exercise his discretion under r. 29 (c). In all other cases an affidavit of law stating that the applicant is "entitled" will be accepted without further inquiry and an order made under r. 29 (b) (see Registrar's Direction, 7th November, 1955, and for details of procedure Practice Direction [1953] 1 W.L.R. 1237; 97 SOL. J. 604). The affidavit of law should refer to the facts and state the law applicable, but this must be supported by adequate evidence (normally by affidavit or statement in the oath by the applicant) as to the facts themselves (Practice Direction [1957] 1 W.L.R. 462; 101 SOL. J. 206). If persons abroad qualified under r. 29 to apply refuse to act, we may consider later the chances of Mr. Lewis himself applying to the court for a "section grant," i.e., a grant under s. 162, *supra* (see *In the Estate of Parnall* [1936] P. 47).

It will be appreciated from what has been said above that the task of getting a grant where the deceased's domicile was abroad may sometimes be quite complicated. It is therefore advisable in such cases to lodge with the registrar an affidavit of facts and all relevant papers for getting his order under r. 29 *first* (Registrar's Direction, 7th November, 1955). The other papers (oath, bond, etc.) needed for the grant can be prepared and lodged after the order has been made.

Any person who is granted administration under the rules discussed above will be obliged, of course, to administer the English immovable property according to the canon of descent in the Administration of Estates Act, 1925.

#### Consular Conventions Act, 1949

We also recall at this stage (in case we discover that the deceased did after all leave another will abroad disposing of the rest of his property) the Consular Conventions Act, 1949. This Act has been applied by Order in Council so far to U.S.A.,

France, Norway, Mexico, Germany, Italy and Greece. It provides that where any person who is a national of the relevant foreign State is named as executor in the will of a deceased person disposing of property in England or is otherwise a person to whom a grant of representation to the English estate of a deceased person may be made, and he is not resident in England and no application for a grant has been made by an attorney duly authorised to act for him, the English court can grant administration to a consular officer of that State by his official title—even if there is a minority or life interest involved. No sureties to the bond will be required in any case.

If after all this Mr. Lewis decides to renounce office then the appropriate person under r. 29, *supra*, will be entitled to apply for a grant of administration with the will annexed.

#### Proof of a foreign will

Also, if a foreign will comes to light dealing with the part of the deceased's estate not disposed of (by the will with which Mr. Lewis is concerned) both in this country and abroad, the English court will admit it to proof on being satisfied that the relevant foreign court has pronounced it valid or that it is valid by the law of the deceased's domicile (*In the Goods of Earl* (1867), L.R. 1 P. 450). Note, however, that if the person who proved the will abroad falls short of the English conception of an executor the English grant is not of probate of the will but of letters of administration with the will annexed (*In the Goods of Earl, supra*) (and this fact should be made clear on the face of the grant: *In the Goods of Kaufman, supra*), unless, of course, the case falls within proviso (b) to r. 29, *supra*. The English grant is made on production of a duly authenticated copy of the will (see *In the Goods of Rule* (1878), 4 P.D. 76, and Practice Direction (1953), *supra*, as to translations). Evidence of foreign law is dealt with by r. 18, *supra*.

#### Grants in other countries

Finally, as the will appointing Lewis executor purports to dispose of movable property in Scotland, U.S.A., Spain and Australia as well as property here, what is Lewis to do about proving his title to the foreign assets in question? He cannot, as pointed out above, re-seal the English grant in Scotland: he will be obliged to apply for a separate grant there; and to apply for the equivalent of a grant in Spain and the relevant States of the U.S.A. with the assistance, no doubt, of foreign lawyers acting as agents. But the English grant can probably be re-sealed (again with the assistance of solicitor-agents there) in each of the States of Australia in which the deceased's assets are situated, as s. 1 of the Colonial Probates Act, 1892—which Act provides for the re-sealing of colonial grants by the English court (see s. 2 (1) and r. 41 of the Non-Contentious Probate Rules, 1954)—requires that before the Act is applied to a British possession by Order in Council there must be adequate reciprocal procedure for sealing English grants in that possession. It is outside the scope of this article to go further into the complications of getting grants outside England.

In the next article we shall consider estate duty problems.

(To be continued)

B. S. K.

#### Obituary

Mr. RICHARD ARTHUR BURROWS, solicitor, of London, W.C.2, died on 1st March, aged 88. He was admitted in 1897.

Mr. FRANCIS MALAN, solicitor, of Ludlow, died on 28th February, aged 83. Admitted in 1898, he was Clerk to the Justices at Ludlow from 1915 to 1955.

Mr. JAMES WILLIAM MURPHY, solicitor, of London, E.C.4, and Tunbridge Wells, died on 5th March, aged 70. He was admitted in 1923.

Mr. RICHARD ROBINSON RODD, solicitor, of Plymouth, died on 1st March, aged 72. He was admitted in 1910.

## County Court Letter

## THE £200 QUESTION

It seems a long time ago now that learned judges used to delight reporters and through them the newspaper-reading public with such remarks as "Who is Mary Pickford?" or "What is oomph?" As has been repeatedly and painstakingly pointed out, it must not be inferred from such questions that the judicial is so far removed from the ordinary life that judges were unaware of such things. No doubt in off moments they sometimes used to go to cinemas and possibly even on occasions suppressed that low whistle of appreciative surprise now given lupine associations and usually not suppressed. But they were without judicial knowledge of such facts of life. Had a court decided that Mary Pickford was everybody's sweetheart, and that oomph was whatever it is, then the position would have been quite different.

It might perhaps be thought that it would hardly need a court to decide such apparently obvious matters, but courts have been known to get into difficulties over questions of even greater simplicity, on the face of it. Take, for instance, the recent case of *William Mallinson & Sons (Mfg.), Ltd. v. Key Transport Co., Ltd.* [1960] 1 W.L.R. 1301.

The facts of the case, for once, are completely immaterial. Suffice it to say that it concerned certain goods damaged in transit. The plaintiff, the consignor, sued the defendant, who denied liability and issued a third-party notice. The third party thereupon brought in a fourth party, and the fourth party a fifth.

## Passing the buck

The action was brought in the appropriate county court, the plaintiff originally claiming £205 10s. 4d. and damages limited to £400. Subsequently it was found that a mistake had been made, and the claim was amended to £198 1s. 7d. At the hearing, the judge decided that the third party was to blame and gave judgment for the plaintiff against the defendant and the defendant against the third party. He also made orders in respect of the costs of the fourth and fifth parties which made them payable by the third party.

The third party, no doubt smarting under this not inconsiderable burden, decided to appeal on a question of fact against the defendant. This is where the fun started. Section 109 (2) (a) (i) of the County Courts Act, 1959, provides that there may only be an appeal on a question of fact in an action founded on contract or tort where the debt, demand or damage claimed exceeds £200. Did it in this case?

The original claim of course did, but it was subsequently amended to below that magical figure. It is true that there was also a claim for damages "limited to £400," but the attentive and long-memory reader will remember that we noticed in a previous County Court Letter that this does not necessarily mean a claim of over £200 and that the particulars of claim should state whether the sum demanded was more or less than that figure (104 SOL. J. 158). In this case, the amended figure of £198 1s. 7d. appeared to bring the claim under £200, but, as was pointed out in the Court of Appeal, even nominal damages of £2, if awarded, would have brought the amount to over £200 again, so that the claim must be for a figure of over that sum.

## Not the same

The Court of Appeal decided to cut short this rather intriguing game of perhappes. It pointed out that a third-party notice called upon the third party to indemnify the defendant and was quite a separate cause of action from the original one between the plaintiff and the defendant. The latter had to pay the former not only the amount of his claim but his costs, so that the claim between the defendant and the third party must be more than £200. The Court of Appeal thereupon heard the appeal, with results that remain top secret, or at least unreported.

So now no learned judge can possibly have any excuse for asking "What is more than £200?" The answer is, or at any rate may be, £198 1s. 7d.

J. K. H.

## "THE SOLICITORS' JOURNAL," 16th MARCH, 1861

On 16th March, 1861, THE SOLICITORS' JOURNAL published a letter from a correspondent urging that "socialeconomy" should be a subject in which solicitors should be trained: "In the present day, the solicitor has become, much more than formerly, the confidential friend and adviser of his clients in their more important transactions. . . . His occupation is not merely the prosecution and defence of their actions or suits, the sale of their estates, or the carrying into effect their agreements. He is consulted as to the arrangements to be made by will or otherwise in providing for their families. If a client contemplates entering into a partnership or making any other large or unusual investment of his capital, he will ask his lawyer's advice before concluding the negotiation; and a solicitor whose mind has been well trained in the principles which regulate social relations will often be able, by his sound and practised judgment, to avert loss and disaster. Again, the boards of most public companies are regularly attended by their solicitors; and the advice of the latter is asked upon every important transaction, whether strictly within the province

of a legal adviser or no. I need hardly say more upon the importance to lawyers of a sound education in the principles of social economy. But . . . objections may be urged . . . such as that boyhood is too early . . . for such a study to be profitably pursued or that knowledge of the social relations is improving in this country and may be left to itself . . . but it is my conviction that no branch of education is less attended to. . . . The operation of industry, skill and economy upon the well-being of society . . . and, above all, the laws which govern the use of credit . . . are subjects upon which it is of the deepest importance that clear notions should be widely diffused. Yet there are very few of our profession who understand them. And in answer to the objection, that this study cannot be profitably pursued in youth, and, therefore, should not be added to a preliminary examination, I would urge that a general knowledge of the principles of social economy is peculiarly required as an introduction to the more minute study of the rules of law by which the action of those principles is protected . . ."

A dramatised version of the trial of Sir Roger Casement in 1916 will be heard in the wireless programme "The Verdict of the

Court" on Wednesday, 22nd March. The postscript will be delivered by Lord Birkett.



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## POST-DATED POSTMARKS OR HOW TO MAIL A LETTER YESTERDAY\*

By James Robert Nielsen, of the California Bar (Fresno)

FOR the past three or four years I have been sitting around waiting for some smart young lawyer to come along and steal my idea for this article. So, each time the *American Bar Association Journal* arrived I would turn to the table of contents looking for a scholarly article that would probably be entitled "Postmarks, a Critical Re-evaluation of Their Privileged Position as Exceptions to the Hearsay Rule." He would probably work the word "*quaere?*" into the title somewhere though I haven't figured out just where. Well, he's had his chance to be famous.

A distraught client calls you and advises that an out-of-town buyer has just accepted an offer made sometime previously. "The point is," the client goes on, "I told this guy that he had to make up his mind by the fifth."

"So?" you ask intelligently.

"So? So here is the tenth already, and this morning I get a confirmation in the mail from the creep. The price jumped on the seventh."

"So?" you ask again, the icy precision of your questions ruthlessly separating the wheat from the chaff.

"So? So what am I paying you for? Do I gotta deliver?"

"When's the letter dated?"

"The fifth. I can't understand it. It shoulda been here on the seventh—the latest."

"Got the envelope?"

"Wait a minute. Yeah. Postmarked the fifth. Musta got lost in the mail, huh? I'd let it go if it was anybody else, but these guys are a bunch of thieves. Same thing happened a year ago with the same outfit. You figure they got the fix in with the Post Office or somethin'?"

### When is a postmark not a Post (Office) mark?

Now, if you practise in a jurisdiction where a contract is formed by putting the acceptance in the course of transmission, you realise your client has a contract and must deliver. And, yet, how many lawyers would now ask the following questions?

"What kind of postmark is it?"

"What do yuh mean? It's just an ordinary one with the city and date on it."

"Is there a stamp on it?"

"Nah. It's printed on, like on bills, with a little number under it. What are yuh gettin' at?"

What am I getting at indeed? The reader has only to take a casual glance at his morning's mail, particularly his bills, to become aware of the tremendous number of businesses, both large and small, that are taking advantage of the advertised benefits of the postage meter.

The significant difference between a postmark regularly affixed by the post office and that printed on the envelope by a postage meter is that, in the former case, the place and date of "forwarding" is attested to by a governmental agency, in the latter the ostensible place and date appearing on the postmark is set manually by the operator of the meter—usually the office secretary.

The point I am raising is applicable to every jurisdiction and any state of facts where the date of mailing becomes a subject of proof. This includes all cases involving the proof of "notice given," such as the cancellation of insurance policies, and certainly all cases arising under a contract conditioned upon such words as "*postmarked on or before.*"

The general rule concerning the admissibility of postmarks in evidence is stated in "*Wigmore on Evidence*," 3rd ed., para. 151, as follows:—

The postmark on an envelope is, upon the same principle [an official statement], admissible to show that the envelope bearing it had passed through the hands of the postal officials at the time and place indicated.

As evidence, a postmark is retrospective in nature. While no presumption arises that a letter was mailed on the day of its postmark, the inferred fact is that, at the time the postmark was affixed, the envelope was under the control of the post office.

I should like to go on record right now as challenging both of these inferences as they apply to "metered mail." The ordinary piece of "metered mail" bears no mark indicating it was in the hands of the post office at all. For all I know, that piece of "metered mail" could just as easily have been slipped under my client's door or in his mail box by some wicked person bent upon fulfilling some evil design.

### 30,000,000,000 letters can be wrong!

Considered in the light of the post office statistics that there are some 295,000 postage meters now in daily use and that the post office handled some thirty billion (that's right, billion) pieces of metered mail last year, and the number of cases in which the date of mailing is a critical factor, the apparent failure of counsel to distinguish between the two types of postmarks, and of the courts to adjust the rules of evidence accordingly, is nothing short of appalling!

To test the validity of my dismay, I persuaded a firm of local attorneys who use such a meter (ostensibly to prevent defilement of their secretaries' fingers by messy stamps, actually to deter pilfering of office stamps at Christmas-time) to allow me to conduct the following experiment on their meter.

On Friday, 5th February, 1960, I addressed four envelopes to myself and then stamped each envelope in turn with a different fanciful date. The envelopes were then deposited with a large bundle of properly dated mail. Bright and early Saturday morning, my four envelopes were delivered to my office with nothing to indicate a different day of forwarding!

Seizing the moment, and my four envelopes, off I marched to place the matter before the responsible persons at the post office. It was not without a trace of nostalgia that I looked up at that once proud Federal building, citadel of communication, guardian of the postmark, now slowly being undermined and corrupted—its authority usurped by creeping private enterprise.

"Responsible persons" turned out to be one George H. Hugdal, Postal Inspector. I placed my four envelopes on his desk and related my tale. His reaction was roughly similar to that which might be expected if a Kentucky moonshiner dropped in on the Alcohol Tax boys, dropped

\* Reproduced from the "American Bar Association Journal" by kind permission of the Editor-in-Chief.

four jugs of white lightning on their desk and asked: "Did you know this was going on?"

After things calmed down and he finished thumbing through his form indictments, I identified myself by displaying my notorial seal and a revoked Diner's Club card and secured the following information.

Yes, the post office is aware that "metered mail" bearing improper dates is being transmitted through the mail. When a piece of "metered mail" bearing an improper date is spotted, it is run through the cancelling machine so that the correct date appears. Files are kept on firms using meters and those who persistently use wrong dates are warned. Failure to heed these warnings might result in having their meter taken away.

#### "Nielsen, stop rocking that boat"

No, the post office does not claim to catch every piece of inaccurately dated mail. The post office wishes people would stop trying to fix legal rights by reference to anything as flexible as a postmark. The post office also wishes that secretaries would pause long enough to advise themselves of the date before metering a mess of mail. The post office also wishes that I would advise them before conducting any further experiments or, as a preferable alternative, it wishes I would quit rocking the boat.

At this point, I should like to make the following boat-rocking observations:—

1. "Metered mail" may be and certainly is being transmitted through the mail bearing, either by design or accident, a fictitious date.

2. "Metered mail" fraudulently dropped into a home or office mail box will have no different physical appearance from that passing regularly through the hands of the postal authorities.

Now I do not believe or wish to imply that those firms employing the postage meter for their mail are all charlatans

bent upon fraudulent business practices. On the other hand, I am not so naïve as to assume that the tendency to fudge a little has been totally eradicated from the commercial world. When I think of the times a letter or a pleading should have been mailed a day or so before it was—the possibilities for speculation along this line are endless—or what a mystery writer could do with a meter to establish an alibi, I feel like a successful Ponce de Leon; for, the postage meter, fraudulently used, gives the user an effective method to turn back the clock. And, if you don't think that's important, try convincing the tax collector that one day is as good as another.

As I said, I have been sitting around for three or four years waiting for some bright lawyer to steal my idea or at least raise the issue in court.

\* \* \* \* \*

[In response to an editorial request the General Post Office comment upon this article as follows:—

People using postal franking machines are as likely as anyone else to make mistakes on occasion. It is also true that if anyone having access to a franking machine deliberately plans to send letters bearing fictitious dates and mixes them with others bearing proper dates he might get away with it so far as the Post Office was concerned. We naturally make snap checks to see that metered mail is correctly dated and we put right any mistakes we find. Anyone persistently using wrong dates would be stopped from using a franking machine, but no such person has come to our notice.

There are now nearly 40,000 franking machines in use in this country compared with some 7,000 before the war. If one of these 40,000 machine users decided to deliver his own letters the recipients could not tell by looking at the envelopes whether or not the Post Office had seen them.]

## Landlord and Tenant Notebook

### REPAIR OF DWELLING-HOUSES

"THERE is no law against letting a tumbledown house," said Erle, C.J., in *Robbins v. Jones* (1863), 15 C.B. (N.S.) 221. Qualification began when the Housing of the Working Classes Act, 1885, s. 12, made landlords of low-rented dwellings responsible for fitness for human habitation, unless the tenancy were for at least three years and the tenant covenanted to make the house fit; the enactment has been replaced again and again, the rent limits being increased; its present day successor being the Housing Act, 1957, s. 6.

The Housing Bill now before Parliament (see pp. 166, 185, *ante*) which, if passed, will become the Housing Act, 1961, does not extend the above legislation. Tucked away in a modest corner of a measure concerned mainly with housing subsidies we find two clauses which, like s. 6 of the Housing Act, 1957, are to cast upon landlords of dwelling-houses certain obligations not to be found in the terms of the tenancies, or even conflicting with those terms; but there are considerable differences when one comes to scope and nature.

#### Scope

This will depend on the length of tenancy and on the nature of the property.

"Any lease of a dwelling-house granted after the sixteenth day of February, nineteen hundred and sixty-one, being a lease for a term of less than seven years." Not "for a term of seven years or less." And, as one would expect, a lease determinable by the lessor within seven years of commencement is to be within the scope; cf. the Rent Act, 1957, Sched. IV, para. 4; but a tenant's option to renew which would make the length of the terms seven years or more is not to subject the tenancy to the provisions.

Exceptions are of two kinds: farm houses, i.e., any lease of a dwelling-house comprised in an agricultural holding within the meaning of the Agricultural Holdings Act, 1948, and two varieties of "new leases" of dwelling-houses granted to the lessee under an *existing* lease. One is a new lease which follows an existing lease under Pt. II of the Landlord and Tenant Act, 1954. The other is a lease granted to the holder of an existing lease which is outside the main provision and which, in the case of a lease granted before 16th February, 1961, would not have been within the main provision if it had been granted after that date.

Tenant farmers either have rights under the Agriculture (Maintenance, etc.) Regulations, 1948, Pt. I, or have the

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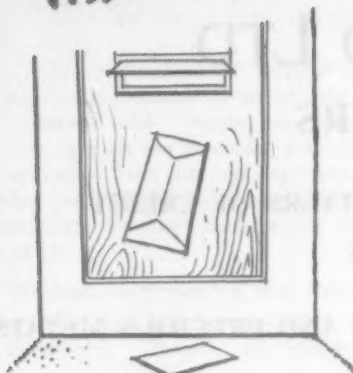
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# What counts most in an envelope?



## IS IT APPEARANCE?

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## IS IT OPACITY?

Particularly important. Many lightweight papers are surprisingly translucent, but confidential material must be sent in a completely opaque envelope.

## IS IT STRENGTH?

Obviously most important of all! The envelope paper must be strong yet sufficiently light in weight not to raise postal charges. A tricky compromise!

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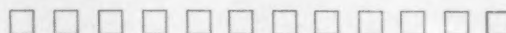
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opportunity to acquire such by arbitration under s. 6 (2) of the Agricultural Holdings Act, 1948. Business tenants are taken care of by the Landlord and Tenant Act, 1954, s. 35, i.e., they can look to the court if negotiations fail to produce satisfactory terms and can bear that section in mind if renewing by agreement (s. 28). The other exception presumably contemplates a case of a short lease following a long one, leaving the landlord free to stipulate for repeating full repairing covenants.

Then, county courts are to be empowered to authorise the inclusion of provisions excluding or modifying the main provision, two conditions being fulfilled: the parties must consent, and it must appear to the court, "having regard to the other terms and conditions of the lease and to all the circumstances of the case, that it is reasonable" to make the order sought. This is a somewhat mixed suggestion, the court's task being, apparently, to ensure that economic or other pressure has not been unduly brought in order to obtain consent.

#### The obligations

The covenant to be implied is one (a) "to keep in repair the structure and exterior of the dwelling-house (including drains, gutters and external pipes)," and (b) "to keep in repair and proper working order the principal installations in the dwelling-house for the supply of water, gas and electricity, and for sanitation and heating"; and "any covenant by the lessee for the repair of the premises (including any covenant to put in repair or deliver up in repair, to paint, point or render or to pay money in lieu of repairs by the lessee or on account of repairs by the lessor, but not including any covenant to use the premises in a tenant-like manner or to make good damage done by the lessee) shall be of no effect so far as it relates to the matters mentioned," etc. Then there are savings: the imported covenant is not to be construed as requiring the lessor: "(a) to carry out any works or repairs for which the lessee is liable by virtue of his duty to use the premises in a tenant-like manner, or would be so liable apart from any express covenant on his part; (b) to rebuild or reinstate the premises in the case of destruction or damage by fire; or (c) to keep in repair or maintain anything not included in the demised premises at the commencement of the term." The "installations" to be kept in repair and proper working order do not include fixtures, fittings and appliances (other than sanitary fixtures) for making use of the supply of water, gas or electricity.

The landlord is to have a right to enter and view the house.

It is obvious that the draftsmen have given a good deal of thought to the subject and are seeking to anticipate argument on a number of points; also that they have been well aware of recent decisions and trends. I will mention a few points.

#### Structure and exterior

In his judgment in *Granada Theatres, Ltd. v. Freehold Investment (Leytonstone), Ltd.* [1958] 1 W.L.R. 845 (subsequently varied: [1959] Ch. 592 (C.A.)) Vaisey, J., said that the expression "structural repairs" had, rather surprisingly, never been judicially defined. The learned judge appears to

have accepted a suggestion that "structural repairs" were those which involved interference with, or alteration to, the framework of the building: "And I would myself say that 'structural repairs' means repairs of, or to, a structure." He rather toyed with the idea that any repairs which were not decorative were structural repairs; but, while his observations were adopted by the Court of Appeal, the case cannot be said to have decided more than that if walls need cement rendering the repair called for is a structural repair, cement rendering not being comparable to paint.

"The exterior" is, perhaps, less likely to lead to argument. There are circumstances in which the windows of a building may be held to be part of its external walls; in *Ball v. Plummer*, reported in *The Times* on 17th June, 1879, the Court of Appeal held that they were part of the skin of a house—which was a public-house; and in *Boswell v. Crucible Steel Co.* [1925] 1 K.B. 119 (C.A.), this was applied to plate-glass windows which were "part of the original structure" of a building consisting of a warehouse and offices "so that without them there could be nothing that could be described as a warehouse at all." In *Taylor v. Webb* [1937] 2 K.B. 283 (C.A.), skylights were held to be parts of roofs. But *Holiday Fellowship, Ltd. v. Viscount Hereford* [1959] 1 W.L.R. 211 (C.A.), is good authority for the proposition that the ordinary windows of an ordinary dwelling-house would be beyond the scope of a covenant to keep the exterior of the house in repair, the specific mention of drains, gutters and external pipes being an additional consideration.

#### Tenant-like manner

In *Warren v. Keen* [1954] 1 Q.B. 15 (C.A.), Denning, L.J., challenged counsel to produce authority for the proposition that when there was no covenant a tenant was bound to keep premises wind- and water-tight; and I think that, while the issue in that case concerned a weekly tenancy, what was said about implied duty by the learned lord justice and his colleagues has inspired the references to the matter in this Bill. The court then took the opportunity of reviewing and restating the law on the subject, and Denning, L.J.'s judgment in particular, with its list of illustrations of "tenant-like manner" and "proper care of the place," is likely to be of value if the proposed legislation occasions disputes about whether the works or repairs are such that the lessee is liable for them by virtue of his duty to use the premises in a tenant-like manner. A point worth considering, however, is that the judgment, as Lord Denning emphasised in *Regis Property Co., Ltd. v. Dudley* [1959] A.C. 370, treats the obligation as not being an obligation to repair!

#### Remedy

Lastly, the proposal excludes the possibility of argument, such as was heard in the Housing of the Working Classes Act, 1885, case of *Walker v. Hobbs & Co.* (1889), 23 Q.B.D. 458, that the tenant is not given a right to damages; but, by the same token, he is not given a right to repudiate the tenancy; and the rule that the covenant is a covenant to repair on notice (*Morgan v. Liverpool Corporation* [1927] 2 K.B. 131) would apply.

R. B.

#### Law Lecture

A lecture will be given in the Old Hall, Lincoln's Inn, W.C.2, on Tuesday, 21st March, at 6.15 p.m., on "Resale Price Maintenance," by Arthur Bagnall; the Hon. Mr. Justice Wilberforce

will take the chair. Tickets are available at the offices of the Solicitors' Managing Clerks' Association, Maltravers House, Arundel Street, Strand, London, W.C.2.

## HERE AND THERE

### SUBURBAN STANDARD

THE concept of Planning as it took shape for Britain after the war was certainly too abstract to achieve, out of the materials available, the heavenly harmony of ordered national design which, we were given to understand, was so soon to be all around us. There was also a curious innocence about the nature of the pressures which powerful interests, old and new, would apply to its development. It cannot, for example, have been foreseen what plausible arguments about essential prestige the race of business tycoons would adduce for filling the centre of London with cliffs of offices, even though the rearing of each beetling facade might mean dragging two or three thousand clerks twice a day through the monstrous mangle of London transport from the outer circumference of the built-up area and back again. We are within measurable distance of a state of society in which a nondescript subtopian sprawl will stretch out from a homeless wilderness of towers and canyons at the centre, sterile because it has no inhabitants, limitless suburbs, with no *urbs* at their heart, housing sub-citizens all round the lifeless shell of what was once a city, abandoned now to a ghostly garrison of caretakers and cats. I do not think the planners can have foreseen the boredom inherent in this rootless state of affairs, a boredom against which much of what is called "juvenile delinquency" is a blind and instinctive revolt. The same causes are producing the same effects in other countries too.

### MAN SIZE

THE answer of the planners is, of course, more and more grandiose planning on a larger and larger scale, mostly based on the assumption that the latest fads represent the Future into which they will be indefinitely projected, that the world will never grow weary of perpetual locomotion by air and motor-road, that the Tower of Babel "architecture of arrogance" after the gospel of Le Corbusier will permanently satisfy the human spirit. But there is something to be said for the idea that what the human spirit is seeking is a society to the scale of human beings. I am told that many years ago when it was announced that there was to be erected at The Law Society's Hall a statue of a goddess "half life-size" a gentleman of inquiring mind asked: "What is life-size for a goddess?" We do not know, but we do know what is life-size for a human being and it is not a good idea to build the framework of our cities on a scale which can only envisage a superhuman race. What human beings need more than anything else is to recover their roots.

### HOUSING QUALIFICATION

Now, news of an interesting experiment in town planning has just come out of Spain. A new town is to be built on the outskirts of Madrid and it is to be called El Toboso, which,

you remember, was the name of the place from which the title of Don Quixote's dream lady was derived. Very well, you will say, what is strange in that? Have we not in England our Waverley Mansions, our Copperfield Crescents, our Elia Drives? Perhaps even now on some housing estate Chatterley Close is in process of erection? Is there not an hotel somewhere in the Shakespeare country which calls its rooms after his plays: "Much Ado About Nothing," "Love's Labour's Lost," "All's Well that Ends Well," "Twelfth Night" (for a longer stay) and, perhaps for a much married lady, "Henry VI, Part III"? Have we English not got culture too? Well, not quite in the same way as the Spaniards. Many an English family, even in its preoccupation with television, likes to use books with nice bindings as room furnishings. The Spaniards are expected to read them. No applicants for houses in El Toboso will be considered unless they can satisfy the Development Corporation that they have read the whole of "Don Quixote." This is modestly called a "cultural restriction." Having regard to the sweep and scope and magnitude of "Don Quixote," I would call it a cultural enlargement. El Toboso is to be a permanent monument to Cervantes, its author. He and his creation will be the central idea in planning the architecture of the town. Now there's an idea for new towns in England. At present they are based on the monotonous idea that the same old "architecture of the future" is what everybody wants. Hordes of people with nothing in common are shovelled together in the embodiment of an abstract architectural concept with no central idea. Get an architect like Fernandez Shaw of El Toboso capable of variations on a theme. Set the theme and you will get homogeneous communities. Let it be "The Canterbury Tales" or "Pickwick" or Jane Austen, or "Antic Hay" or "Brideshead Revisited" or Hardy or Anthony Trollope or, bless me, if you like, Wesker's plays. You might even take the New Testament. Apart from anything else, it is very good literature and it does have a central idea. Having made your choice, see that all the prospective inhabitants are thoroughly conversant with the work or works forming the basis of the theme. Is this "cultural qualification" too stringent, do you say? Well, we have always been given to understand that the object of all those millions poured out on education was to produce an educated democracy. Or wasn't it?

### RETROSPECTIVE FOOTNOTE

ON the subject of barristers and baths touched on recently in this column, I find from conversation with the son of a late member of the Inner Temple, Walter Stewart, that it was in 1903 that his father installed in his residential chambers in Temple Gardens the first bath seen in the Temple, surely an historic event.

RICHARD ROE.

### THE WEEKLY LAW REPORTS

Cases reported in the issue of the Weekly Law Reports dated 10th March include the following:—

	Vol.	Page		Vol.	Page
Australian Hardwoods Pty., Ltd. v. Commissioner for Railways	1	425	R. v. Bradley	1	398
Farmers' Machinery Syndicate (11th Hampshire) v. Shaw	1	393	Sowa v. Sowa	2	313
Hinchley v. Rankin	1	421	Taylor v. Mead	1	435
Morecambe and Heysham Corporation v. Robinson	1	373	Thomas v. National Farmers' Union Mutual Insurance Society, Ltd.	1	386
Quintas v. National Smelting Co., Ltd.	1	401	Tollemache Settled Estates Trustees v. Coughtrie	2	318

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## REVIEWS

**The Charities Act, 1960, with annotations.** By SPENCER G. MAURICE, of Lincoln's Inn, Barrister-at-Law. pp. xxii and (with Index) 132. 1960. London: Sweet & Maxwell, Ltd. £1 5s. net.

Readers of this journal are well acquainted with Mr. Spencer Maurice as a writer with exceptional experience of this branch of the law and will expect a great deal of this publication. They will not be disappointed. But legal practitioners are not the only potential readers of a treatise on the Charities Act; the great number of charities in this country and the important part which they play in our social and economic life will ensure a lively interest in Mr. Maurice's book among laymen, not only officials of charitable institutions but also members of the public who in one capacity or another give their services to the administration of charitable trusts. It could not have been easy to write a guide to the new Act suitable for these diverse kinds of reader but, in the main, the author has succeeded admirably. In the annotations, the "lawyer's law" is explained as part of a historical process, by reference to the legislative antecedents of the Act and, where necessary, cases (the references to cases being cut down—rightly, we think—to an absolute minimum); for light on the administrative provisions, with which non-lawyers will perhaps be more concerned, the reader is referred to what was said in the course of the passage of this statute through Parliament, and very illuminating these references are. This, the main part of the book, is excellent, within the scope that the author has allowed himself. The introduction to the annotated version of the Act is somewhat less satisfactory, being too short to add much to what is said, with equal clarity, but much greater detail, in the notes. But perhaps that is a lawyer's view, and others may find the introduction helpful both on the Act and on the subject of charitable trusts generally, to the extent to which the subject is, necessarily, given some treatment.

This volume was published too early to include a reference to the Rules of the Supreme Court (No. 5), 1960, which lay down procedures for various kinds of charity proceedings. This omission will, no doubt, be among the first things to be rectified in a second edition. The opportunity could then be taken of considering whether a short note of the facts and the decision should be added after the citation of any decision, for the benefit of the lay readers who have no access to reports. Finally, this Act has superseded all earlier legislation on the subject, except a section of the Settled Land Act (s. 29) and two recent statutes (the Charitable Trusts (Validation) Act, 1954, and the Recreational Charities Act, 1958). Would it not be worth the slight expansion of this volume involved to include annotated versions of these enactments in it, and so make "Maurice on the Charities Acts" a complete compendium of the statute law on charities?

**The Law relating to Family Allowances and National Insurance.** The Statutes, Regulations and Orders as now in force. Annotated and Indexed. Edited by J. Sr. L. BROCKMAN, B.A., LL.B., of Gray's Inn, Office of the Solicitor, Ministry of Pensions and National Insurance. pp. xxii and 1207. 1961. London: Her Majesty's Stationery Office. Two volumes (not sold separately), £4 10s. net.

In the introduction to this work it is stated that it was prepared primarily for those concerned with the day-to-day administration of national insurance legislation. What is good enough for Ministry officials will certainly be found of great assistance to those whose job may involve advising insured persons on their legal position. The two loose-leaf volumes contain the provisions of the Family Allowances Act, 1945, and the National Insurance Act, 1946, embodying all textual amendments current at 1st August, 1960. The National Insurance Act, 1959, and the regulations made under it, have not, however, been included but otherwise reference is made to all the statutes included in the citations "the Family Allowances Acts, 1945 to 1959" and "the National Insurance Acts, 1946 to 1959." The later Acts are set out in skeleton form, showing in full only those provisions which have not been inserted in the text of one of the principal Acts.

Principal regulations are printed as amended, with amending instruments reproduced only in so far as they are not incorporated into the text of the principal ones.

The treatment accorded to the statutes and regulations in this work will save anyone using it a considerable amount of time, and may well prevent his desk becoming cluttered with many volumes containing the numerous amendments made in any particular branch of national insurance law. The work is to be kept up to date by supplements and an index to be provided at the end of the volume is in course of preparation.

**The New Law of Betting and Gaming.** Reprinted from Butterworth's Annotated Legislation Service. By J. P. EDDY, Q.C., and L. L. LOEWE, M.A., of the Middle Temple and the South-Eastern Circuit, Barrister-at-Law. pp. x and (with Index) 290. 1961. London: Butterworth & Co. (Publishers), Ltd. £2 5s. net.

The narrative portion of this work is in three parts, Part I dealing with the law of betting and Parts II and III with the law of gaming and amusements with prizes, respectively. In each case the authors have sought to give the background to the Betting and Gaming Act, 1960, and, in particular, to set out and explain the policy and effect of the new law. The book is completed by an annotated text of the Act of 1960, together with the statutory instruments made under it, and there is also an appendix containing the other relevant statutes, as amended.

The legal profession will welcome this work and, in our view, it is the best available dealing with this important but complex and difficult branch of the law. It is complete, and much thought and care have been given to its preparation.

**Ownership, Control and Success of Large Companies.** By P. SARGANT FLORENCE, C.B.E., M.A. (Cantab.), Ph. D. (Columbia), (Hon.) D. Litt. (Hum.) (Columbia), Professor Emeritus, University of Birmingham. pp. xiv and (with Index) 279. 1961. London: Sweet & Maxwell, Ltd. £3 3s. net.

All who are interested in the structure of companies will find this work of fascinating interest. It is the result of a monumental piece of research which must have taken many years. Professor Sargant Florence has carried out an analysis of English industrial structure and policy for the period from 1936 to 1951 and involving close consideration of many aspects of some 1,700 of the largest companies, covering about 40 per cent. of all the country's economic activities and a still higher proportion of its industry.

The study is based on a sample of the public companies registered at Bush House which are listed in the commercial and industrial, and breweries and distilleries, sections of the "Stock Exchange Year Book, 1951," with issued share capitals of or over £200,000. For purposes of analysis those companies were further divided into three groups according to *issued share capital* of under £1m., £1m. to under £3m., and £3m. and over. The author considers at p. 55 alternative criteria for grouping companies, and this should be borne in mind if any comparisons be made between his data and that given in the Board of Trade's "Company Assets and Income in 1957," which dealt with companies having *net assets* of or over £1m. at the end of 1957.

Topics considered in the light of the statistical material so painstakingly gathered include the concentration of ownership and votes; the position of directors, the size of boards of directors and interlocking directorships; ownership and the seat of control; dividend policy; and investors' financial success between 1936 and 1951. The appendices contain the basic tables of statistics upon which the work is founded. The less statistically-minded should not let App. A deter them from perusing App. B, which names the largest voteholders of thirty of the largest companies subjected to analytical scrutiny, and is most enlightening. Against each such member's name is a letter denoting his or its type, whether a person, company, institution, nominee or mixed. We would suggest that a key to the abbreviations used (explained on p. 116) should also be set out at the commencement of the appendix on p. 222.

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## NOTES OF CASES

*The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and, in general, full reports will be found in the Weekly Law Reports. An asterisk against a case indicates that there is no present intention of reporting it in the Weekly Law Reports.*

### Judicial Committee of the Privy Council

#### MURDER: DIMINISHED RESPONSIBILITY

##### *Rose v. R.*

Lord Tucker, Lord Denning, Lord Morris of Borth-y-Gest  
6th March, 1961

Appeal from the Supreme Court of the Bahama Islands.

The appellant and another were convicted in the Supreme Court of the Bahama Islands (Henderson, C.J., and a jury) of the murder by stabbing on 17th February, 1960, of an overseer at the Fox Hill Prison in the Bahamas. The killing of the overseer took place during an attempt to obtain the keys with a view to escaping. In the case of the appellant the defence of diminished responsibility was raised under s. 2 (1) of the Homicide (Special Defences) Act, 1959, of the Bahama Islands, which is identical in terms with s. 2 (1) of the Homicide Act, 1957, of England and Wales. Both the accused were sentenced to death. The appellant alone appealed. There was no dispute that the evidence for the defence constituted evidence fit to be considered on the issue of diminished responsibility, and the grounds of the appeal were that the jury had been wrongly directed on that issue.

LORD TUCKER, giving the judgment, after referring with approval to the interpretation by Lord Parker, C.J., in *R. v. Byrne* [1960] 2 Q.B. 396, of the words "abnormality of mind" and "mental responsibility," said that their lordships were of opinion that the direction given to the jury by Henderson, C.J. by which they were told to assess the degree of abnormality of mind in terms of the borderline between legal insanity and legal sanity as laid down in the M'Naughten Rules was a serious and vital misdirection which would, no doubt, not have been given had the Chief Justice had the benefit of Lord Parker's judgment. If insanity was to be taken into consideration, as would usually be the case, the word must be used in its broad popular sense. The direction to the jury must always be related to the particular evidence, and the words "borderline" and "insanity" might not in some cases be helpful. There was a further misdirection by the use of the words "Did he intend to do it; if so, murder," for a man might know what he was doing and intend to do it and yet suffer from such abnormality of mind as substantially impaired his mental responsibility. Verdict of murder and sentence of death quashed and a verdict of manslaughter and a sentence of imprisonment for life substituted therefor.

APPEARANCES: *J. T. Molony, Q.C.*, and *D. A. Grant (Blyth, Dutton, Wright & Bennett)*; *Neil Lawson, Q.C.*, and *Mervyn Heald (Charles Russell & Co.)*.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law]

#### ADMINISTRATION OF ESTATES: GHANA: POSITION OF WIDOW MARRIED UNDER NATIVE CUSTOMARY LAW

##### *Coleman v. Shang, alias Quartey*

Lord Tucker, Lord Hodson and Mr. L. M. D. de Silva  
7th March, 1961

Appeal from the Ghana Court of Appeal.

The appellant, the sole surviving child of a marriage under the Marriage Ordinance (Ghana) between his mother and father, an Osu man who died intestate, claimed that he alone was entitled to obtain the grant of letters of administration of the intestate's estate to the exclusion of the respondent, who, after the death of the appellant's mother, had married the intestate in accordance with native customary law.

Section 83 of the Courts Ordinance (Gold Coast) provided that "the statutes of general application which were in force in England on 24th July, 1874, shall be in force within the jurisdiction of the courts," and under the Interpretation Ordinance, "Ordinance" included an Act of the Imperial Parliament applicable to the Gold Coast and in force, and "words in the singular include the plural and vice versa." The trial judge made a grant in favour of the appellant; on appeal by the present respondent the Ghana Court of Appeal on 23rd November, 1959, ordered that letters of administration be granted jointly to the appellant and the respondent. The appellant now sought to restore the judgment of the trial court.

LORD TUCKER, giving the judgment, said that the effect of the Courts Ordinance and the Interpretation Ordinance was that the Act 21 Hen. 8, c. 5, in which s. 2 provided that in the case of a person dying intestate administration should be granted to the widow, and the Statute of Distribution, 1670, 22 & 23 Car. 2, c. 10, s. 3, which enacted that the wife of an intestate was entitled to one-third of the personal estate, were included in the definition of "Ordinance" and in force in the Gold Coast. Those statutes were therefore to be construed in their application to Ghana so that words in the singular included the plural unless there was something in the subject or context repugnant to such construction, which was not so here, the subject and context being the distribution of the personal property of an intestate validly married by native law and custom of Ghana, which recognised the existence of more than one wife or widow. Also, apart from the Interpretation Ordinance, in dealing with the personal property in Ghana of an intestate domiciled and validly married there in accordance with its laws, the courts of Ghana in the application of the above-mentioned Imperial statutes to that country would be entitled to apply the words "wife" and "widow" to all persons regarded as lawful wives or widows according to the law of Ghana. There would accordingly be a joint grant to the appellant and the respondent on the footing that the latter was the widow of the intestate. She was entitled (under the Marriage Ordinance) to a wife's proportion of the two-thirds of the personal estate over and above any share of the remaining one-third to which she might be entitled by the relevant native customary law. The Board would not, except in exceptional circumstances, go behind what the court below in its judgment had stated to be undisputed or admitted facts. Appeal dismissed; the appellant to pay the costs thereof.

APPEARANCES: *Ralph Millner (T. L. Wilson & Co.)*; *Joseph Dean and Miss E. Aryee (A. L. Bryden & Williams)*.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law]

### Court of Appeal

#### RATING PROPOSAL: CARAVAN SITE ON DIFFERENT LEVELS: WHETHER PROPOSAL RELATED TO PART OR WHOLE OF SITE

##### *Sussex Caravan Parks, Ltd. v. Richardson*

Pearce, Harman and Davies, L.JJ.

26th January, 1961

Appeal from the Lands Tribunal.

The ratepayers occupied land, which was formerly agricultural, as a caravan site. Part of the land was a quarry; steps led from the quarry to the main site on a higher level, where there were rateable buildings. In 1957, the valuation officer visited the quarry but did not notice

the steps leading to the main site. His proposal (the first) stated: "Description: Land used as caravan park. Name and situation: Junction of Bexhill Road and Harley Shute Road. Rateable value: £20." No objection was made and the valuation list was altered accordingly. In 1958, the valuation officer, having become aware of the existence of the main site, made the second proposal: "Description: Caravan camping site, licensed club room, shop and premises. Name and situation: Combe Haven Caravan Site, Haven Road. Rateable value: £2,600." The ratepayers objected on the ground that there was already an existing assessment on which rates had been paid. The local valuation court accepted the second proposal and confirmed it. On appeal the Lands Tribunal held that the first proposal related to the whole site and that therefore the second proposal was bad in that it related to a hereditament already on the valuation list. The valuation officer appealed.

PEARCE, L.J., said that under the existing circumstances found by the tribunal, the first proposal related to the quarry, and not to the site as a whole. The omission of any reference to the rateable buildings on the main site *prima facie* indicated that the main site was not included. The description and situation reinforced that presumption. Those matters were sufficient to outweigh any *prima facie* presumption that the two sites, being so close together, would be rated as one hereditament.

HARMAN, L.J., agreeing, said that there were two sites used as caravan parks and not one. The first proposal related to the quarry and the second one to the main site; they were both good proposals and the rate could properly be levied in respect of each one.

DAVIES, L.J., agreed. Appeal allowed.

APPEARANCES: *Sir Derek Walker-Smith, Q.C.*, and *Alan S. Orr (Solicitor, Inland Revenue)*; *Patrick Browne, Q.C.*, and *Graham Eyre (Menneer, Idle & Brackett, Hastings)*.

[Reported by Miss C. J. ELLIS, Barrister-at-Law]

#### NO LIMITATION ON CARAVANS TO USE RIGHT OF WAY

##### \**Scotson v. Jones*

Upjohn and Pearson, L.J.J., and Salmon, J.  
8th March, 1961

Appeal from Conway, Llandudno and Colwyn Bay County Court.

An estate in Wales consisting of hall and home farm was severed in 1946 and the farm was conveyed to new owners, together with a right of way over a drive to the hall, but without any express grant of the right of way. At the date of the conveyance the drive was used mainly for the farm's agricultural purposes but some five or six caravans camping in the farm fields during summer holidays used the drive, as did people coming to the farm for milk and eggs. By 1960, new occupiers of the farm had greatly extended the business of running a caravan site to accommodate something over sixty caravans, some only for a night or two, and had also set up a general store so that the use of the drive had increased considerably for caravan purposes. The owners of the hall, who also used land for caravan purposes, claimed a declaration in the county court that the farm tenants' right of way over the drive was limited to agricultural purposes and could not be used for the purposes of the caravan site. The county court judge found that, though the volume of use of the drive by caravanners had increased very greatly, it did not constitute any fundamental alteration in user from that existing in 1946, and he dismissed the owners' claim. The owners appealed.

UPJOHN, L.J., said that as there was no express grant of any right of way in the 1946 conveyance the claim to use it rested on s. 62 (2) of the Law of Property Act, 1925, and therefore the question to be determined was what ways, privileges,

easements, rights and advantages within that subsection had been enjoyed with the farm at the time of the 1946 conveyance. The vital question was the user in 1946. At that date new cars were almost impossible to obtain, second-hand cars were at a premium, and petrol rationing was in force. By 1960, though the farm was still used for agricultural purposes, there had been a substantial increase in the number of caravans. That did not constitute such a change in the nature and quality of the user as to put an undue burden on the servient tenement or change the nature of the right so as to entitle the hall owners to a declaration limiting the user of the right of way to agricultural purposes. The farm tenants were entitled to use the field for caravan purposes and the drive for access thereto, and could continue to do so and put more caravans on the field if they so desired. A mere increase in the number of caravans did not change the nature of the right, which was there to use for farm purposes and caravan purposes; and while it was so used there was no limitation which could properly be put on it.

PEARSON, L.J., and SALMON, J., agreed. Appeal dismissed.

APPEARANCES: *Sir Lynn Ungood-Thomas, Q.C.*, and *Joseph Turner (John Bellis & Co., Penmaenmawr)*; *H. E. Francis, Q.C.*, and *H. Eifion Roberts (David Williams & Co., Caernarvon)*.

[Reported by Miss M. M. HILL, Barrister-at-Law]

#### HIRE PURCHASE: WRONGFUL REPOSSESSION: IMPLIED TERM: DELEGATION:

##### \**Spruce v. Unity Finance, Ltd., and Others*

Pearce, Harman and Davies, L.J.J.  
8th March, 1961

Appeal from Judge Emlyn-Jones.

The plaintiff entered into a hire-purchase agreement to purchase a car from a finance company. By cl. 5 the agreement required the hirer to insure the car. By cl. 12 the finance company were entitled to terminate the agreement if the hirer failed "to observe or perform any agreement or condition herein contained." The finance company asked the plaintiff for particulars of the insurance policy, having been told by local brokers, named in the agreement, that no policy had been taken out. The plaintiff failed to give any details. The finance company then served a "termination notice and authority to collect" on the plaintiff and instructed a firm of motor dealers, the third defendants, to repossess the car. The motor dealers then instructed another dealer, the second defendant, to take back the car, which he did. In fact the car had been comprehensively insured at the brokers' head office by the plaintiff during the whole period of hire. Accordingly, the plaintiff claimed damages for breach of contract and detainee. The county court judge awarded the plaintiff nominal damages for breach of contract against the finance company, and general damages for detainee against the second defendant. He granted the second defendant an indemnity against the motor dealers, but refused the dealers an indemnity against the finance company. The motor dealers appealed.

PEARCE, L.J. said that the finance company submitted that they were entitled to terminate the hire-purchase agreement because one had to imply a term into cl. 5 that the hirer would give the finance company all the necessary information about the insurance. His lordship found it impossible to imply such a term. Such a term was often inserted in hire-purchase agreements and its omission indicated that it did not form part of the contract. Moreover, the parties could carry out their duties under cl. 5 without the information, which was merely useful to find out whether cl. 5 had been complied with. Further, cl. 12 provided that the agreement could be terminated if there was a breach of a condition contained in the agreement, and the words of cl. 12 could not include implied conditions. The maxim

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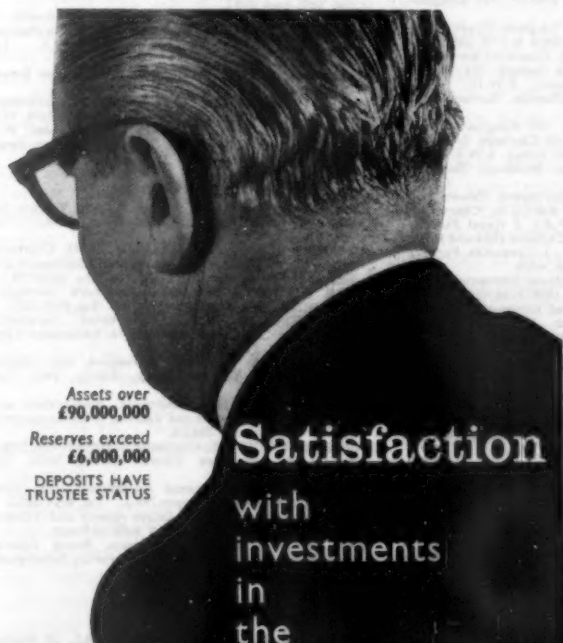
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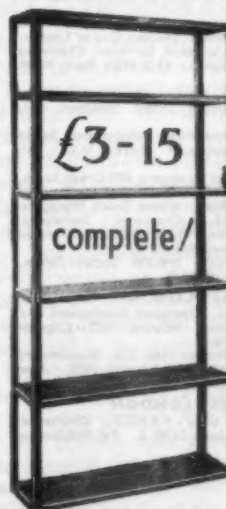
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(Continued on p. xv)

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of *contra proferentem* applied to the hire-purchase agreement. Accordingly, the finance company were in error and therefore in breach of contract. The judge found that the motor dealers were not entitled to an indemnity because, although they were authorised to repossess the car, they had no authority to delegate because there was personal confidence reposed in them and special skill was needed. The judge was wrong about that. The hirer of a car might well be in some distant part of the country and it would be absurd to think that some particular dealer asked to repossess the car had himself to travel there instead of telephoning a reputable dealer in the area. There was nothing in the present case to show that the right to repossess was personal to the third defendants and not capable of being delegated. Accordingly, the third defendants were entitled to delegate, and, as the second defendant had not acted improperly, the third defendants were entitled to an indemnity against the finance company.

HARMAN and DAVIES, L.J.J. concurred. Appeal allowed.

APPEARANCES: *Gordon Clover, Q.C.*, and *Peter Smith (Baines & Baines, for G. E. Taylor & Son, Ellesmere Port)*; *M. Feeny (Sharpe Pritchard & Co., for Banks, Kendall, Taylor & Gorst, Liverpool)*; *Alan S. Booth (George Wallace, Ellesmere Port)*; *David McNeill (Field, Roscoe & Co., for Berkson & Berkson, Birkenhead)*.

[Reported by Miss C. J. Ellis, Barrister-at-Law]

#### WRONGFUL DISMISSAL BY CABLEGRAM

##### \*Kopytynski v. Fayer

Upjohn and Pearson, L.J.J., and Salmon, J.

9th March, 1961

Appeal from Westminster County Court.

In 1953 the plaintiff was engaged as supervisor of the defendants' prosperous photographic studio at £10 a week plus commission. There was no written contract of service and no agreed period of notice. In 1954 his status and conditions were raised and he was given a power of attorney in wide terms to run the business for the owners when they were abroad. By 1957 friction arose between the parties; and on 7th May the defendants cabled to him from the United States: "Your recent attitude and reluctance to execute your duties leaves no alternative but to give you notice. We have instructed to revoke power of attorney and signature rights." Later the same day the power of attorney was revoked. The plaintiff treated that as summary dismissal and consulted solicitors, who wrote to the defendants threatening proceedings for damages unless proper compensation was agreed. The defendants replied by letter offering the plaintiff four weeks' notice on their terms. The plaintiff brought his action, but the county court judge dismissed it, save for an award of £2 17s. 9d. commission, holding that the plaintiff should have worked out the four weeks' notice. The plaintiff appealed.

PEARSON, L.J., said that an ordinary man in the plaintiff's position acting under a wide power of attorney could reasonably understand the cablegram to mean that his employment was being terminated summarily. The second part of the cablegram as to the revocation of the power of attorney enabled the court to interpret the otherwise obscure and ambiguous words "leaves no alternative but to give you notice." The plaintiff was therefore entitled to treat it, as he had done, as a fundamental repudiation of the contract, since there was no suggestion of any misconduct justifying such dismissal. Nor was there any reason why, having elected to treat the cablegram as a breach of his contract of employment, he should have worked out the four weeks' notice given in the subsequent letter, for that letter could not affect the legal position in any way. Accordingly, the

plaintiff was entitled to the proper sum of damages for wrongful dismissal and, as on the evidence reasonable notice would have been three months, he was entitled to his salary for three months and to sums for commission which on the agreed basis he would have earned during that period. The order of the county court judge should be varied to award the plaintiff £182 17s. 9d. for breach of contract.

UPJOHN, L.J., and SALMON, J., agreed. Appeal allowed.

APPEARANCES: *Christopher Beaumont (Vyvyan Wells & Sons)*; *Geoffrey Lovegrove (Brooks, Davidson & Bartley)*.

[Reported by Miss M. M. Hill, Barrister-at-Law]

#### GARNISHEE PROCEEDINGS NOT MAINTAINABLE AGAINST COUNCIL UNDER R.I.B.A. BUILDING CONTRACT

Grant Plant Hire v. Trickey; Beaconsfield Urban District Council (Garnishees)

Upjohn and Pearson, L.J.J. and Salmon, J.

10th March, 1961

Appeal from High Wycombe County Court.

A local authority contracted on 7th November, 1958, with one T to build flats estimated to cost about £40,000, under a contract incorporating the R.I.B.A. terms. Under its provisions the architect gave certificates from time to time and payment was made to T of 90 per cent. of the amount due, 10 per cent. being retained in the council's hands against possible later complaints and claims. By cl. 19 it was provided that if the contractor defaulted and the contract was terminated by the council "the employers shall not be bound by any other provisions to make any payment to the contractor." By May, 1960, some £17,000 had been spent and accordingly some £1,700 was retained by the council. On 27th May, 1960, the council terminated the contract in accordance with cl. 19 because of T's defaults. On 28th May, one of T's subcontractors, who had on 25th May, obtained judgment against him for £392 18s. 8d., issued a summons in the county court against the council asking for a garnishee order in respect of that amount. The county court judge made the order asked for. The council appealed.

UPJOHN, L.J., said that if, when the summons was served on 28th May, there was in the hands of the council any debt due from them to T the judgment creditors would become secured creditors of that debt. It had been submitted for them that the 10 per cent. retained by the council was such a debt for the purpose of garnishee proceedings so that the council could no longer set off against the £1,700 retained by them any sums due from T by reason of his failure properly to carry out the contract. His lordship could not accept that startling result. The position here was that by 28th May, when the summons was served on the council, the contract with T had been determined and under cl. 19 of the contract nothing became due as a present debt from the council to T at all. The work had still to be completed and when it was done the architect had to certify the expenses incurred and work out the figures to see whether a balance was due from council to contractor or vice versa. Not until then was there a debt payable by the council, and until the architect had issued his certificate it could not be said for the purposes of attachment that anything was due. Accordingly, there was on 28th May no debt in the hands of the council then due to the contractor which could be attached on the application of the judgment creditors. The appeal should be allowed.

PEARSON, L.J. and SALMON, J. agreed. Appeal allowed.

APPEARANCES: *Frank Whitworth and Neil Butler (Sydney Redfern & Co.)*; *John G. Wilnors (Berryman, for Allan Jones & Co., High Wycombe)*.

[Reported by Miss M. M. Hill, Barrister-at-Law]

**Chancery Division**  
**RULE IN HOWE V. LORD DARTMOUTH**  
**APPLIED**

*In re Berry, deceased*

Pennycuick, J. 25th January, 1961

Adjourned summons.

By his will dated 17th March, 1955, a testator gave his residuary estate to trustees on trust for sale and conversion with power to postpone sale and to invest the same and hold the residue and investments on trust to pay the income thereof to his wife for life and after her death, and after paying certain pecuniary legacies to his grandchildren, on trust as to both capital and income for his two daughters in equal shares. Clause 7 of his will provided: "... no part of any dividends, rents, interests or moneys of the nature of income shall be apportioned to or treated as capital of my estate and I declare that the whole thereof (whether the same be paid in respect of a period wholly or only partly prior to my death) shall belong to the person entitled under my will to the investment or property from which the same respectively arose and if there shall be a tenant for life of such investment or property such dividend rent interest or money shall be income payable to such tenant for life." By cl. 8: "I declare that no part of my estate not actually producing income shall be treated as producing income for the purposes of the will." Clause 9 provided: "Any moneys requiring investment under the provisions of this my will may be invested in any investments which my trustees shall in their absolute discretion think fit whether trustee securities or not." The testator died on 30th September, 1958, survived by his wife and two daughters. His principal asset was an hotel business which he had carried on alone, the accounts of which were made up in respect of the accounting period ending on 31st March in each year. The testator's trustees carried on the business after the testator's death until 11th May, 1959, when it was sold for £36,770. An account taken for the period 31st March to the testator's death showed a profit of some £6,000, of which the testator had drawn some £400. During the period from the date of death to the sale, the business made a loss of some £1,400. The trustees took out a summons to determine whether the profit of £6,000 less the testator's drawings and the loss of £1,400 should be attributed to capital or income or should be apportioned between them.

PENNYCUICK, J. said that it was established by an overwhelming weight of authority that the rule in *Howe v. Lord Dartmouth* (1802), 7 Ves. 137, applied where there was a trust for conversion with power to postpone and nothing more, and there was nothing in the terms of the will to exclude the application of the rule. Consequently, the widow of the testator was not entitled to the actual income arising from the business—which was not an authorised investment—in respect of any period but was merely entitled to 4 per cent. on the proceeds of sale of the business in respect of the period from the date of death to the date of sale. Declaration accordingly.

APPEARANCES: *E. I. Goulding* (Woodcock, Ryland & Co., for *Preston & Redman*, Bournemouth); *R. Cozens-Hardy Horne* (Stephenson, Harwood & Tatham); *A. C. Sparrow* (T. D. Jones & Co., for *W. D. Clark, Brookes & Co.*, Smethwick).

[Reported by Miss PHILIPPA PRICE, Barrister-at-Law]

**COMPANY'S GRATUITOUS PAYMENTS TO**  
**EX-EMPLOYEES ULTRA VIRES**

*Parke v. Daily News, Ltd., and Others*

Wilberforce, J. 3rd February, 1961

Motion for injunctions.

The defendant company, D.N., was the owner of two newspapers which the directors arranged to sell to another

newspaper group, A.N., for some £2,000,000. It was at all material times the intention of the directors of D.N. to devote the whole of the purchase money, less the costs of cessation of printing and publication, to the staff and pensioners of D.N. by way of compensation for loss of pension rights, pension benefits and payments in lieu of notice. On 17th October, 1960, D.N. ceased publication of the two newspapers and on the same day sent out to its shareholders a circular letter informing them of the steps that had been taken. The circular letter enclosed an interchange of letters between the respective chairmen of D.N. and A.N. explaining the reasons for the sale and stating D.N.'s intentions as to the application of the purchase price. On 20th January, 1961, a notice was sent out by the directors of D.N. to all shareholders stating that a general meeting was to be held on 8th February for the purpose of considering and passing a resolution authorising the directors to apply the balance of the purchase moneys receivable by D.N. under the contract of sale in the manner set forth in para. 5 of the circular accompanying the notice. Paragraph 5 of the circular, *inter alia*, stated that the sum of £2,000,000 would be applied: "(a) In repayment of a loan made to D.N. by the pension trustees for existing pensioners—£500,000. (b) In discharging the liabilities to former employees in respect of payments in lieu of notice. These payments have been made—£390,000. (c) In paying compensation for loss of pension rights representing basically one week's pay for each year of service—£1,110,000." On 2nd February, 1961, the plaintiff, the holder of 50,000 2s. ordinary shares in D.N., issued a writ claiming a declaration that the proposed resolution was *ultra vires* and injunctions restraining the company and the directors from passing the said resolution. The plaintiff now moved for the injunctions claimed in the writ.

WILBERFORCE, J., said that the statement of intention by the chairman of D.N. in his letter to the chairman of A.N. to devote the purchase money by way of compensation to employees was quite insufficient to establish that there was any bargain or contract binding upon D.N. to do so, and he, his lordship, proceeded on the basis that the payments proposed were gratuitous. In the absence of any evidence from the directors of D.N. satisfying the court that the payments proposed in para. 5 (c) were reasonably incidental to the carrying on of the company's business and were to be made for the benefit and to promote the prosperity of the company, as was stated to be necessary in *In re Lee, Behrens & Co., Ltd.* [1932] 2 Ch. 46, the plaintiff had made out a *prima facie* case that the proposed application of the money, which was an unprecedentedly large sum, was *ultra vires*. An injunction would be granted restraining the company and the directors from passing that part of the resolution relating to the application of moneys in para. 5 (c).

APPEARANCES: *Morris Finer* (Howe & Rake); *R. B. Instone* (Linklaters & Paines).

[Reported by Miss PHILIPPA PRICE, Barrister-at-Law]

**VARIATION OF TRUST: POWER OF APPOINTMENT:**  
**OBJECTS NOT JOINED AS PARTIES TO APPLICATION**

*In re Christie-Miller's Marriage Settlement*

Wilberforce, J. 7th February, 1961

Adjourned summons.

Under a marriage settlement the husband's fund was held, subject to trusts in favour of the husband, the wife and the children of the marriage, on trust for the brothers and sister of the husband and such of their children or remoter issue living at his death as the husband should appoint, and in default of appointment on trust for his brothers and sister living at his death in equal shares. The trustee of the settlement issued a summons under the Variation of Trusts Act, 1958, to which the husband was a respondent, for an order approving an arrangement affecting the trusts of the fund.

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The issue of the husband's two brothers and one sister were not joined. Counsel agreed that the order should recite that the husband released the power of appointment so far as was necessary to make the arrangement binding on any children or remoter issue of his brothers and sister.

WILBERFORCE, J., said that the proceedings had been properly constituted without joining the issue of the brothers and sister. The appointor was a party to the application and he was free to release his power of appointment if he wished and thereby extinguish the possible interests of such issue. It had been submitted that in concurring in the application the appointor had by his conduct released the power of appointment *pro tanto* and so precluded any appointee from objecting to any act done pursuant to the arrangement. He would not have to decide that question because of the recital agreed between counsel.

APPEARANCES: J. A. Brightman, J. A. Wolfe and E. I. Goulding (*Ranger, Burton & Frost*).

[Reported by Miss M. G. Thomas, Barrister-at-Law]

#### EASEMENT: RULE AGAINST PERPETUITIES: RIGHT TO USE SEWERS "THEREAFTER TO PASS"

**Dunn v. Blackdown Properties, Ltd.**  
Cross, J. 3rd March, 1961

Action.

By two conveyances dated respectively 17th December, 1926, and 11th January, 1938, two adjoining plots of land were conveyed to the plaintiff's predecessors in title together with the right for the grantees, their heirs and assigns to use the sewers and drains then passing or thereafter to pass under a private road abutting on the plots and belonging to the defendants. At the date of the conveyances there were no such sewers or drains, but the defendants later built a surface water sewer along the road and a soil sewer which ran along the road and then on to other land of the defendants. The plaintiff claimed a declaration that she and her successors were entitled to use the sewers and drains passing or thereafter to pass under the road in connection with her land. The defendants pleaded that the grants were void for perpetuity and alternatively that the plaintiff was not entitled to use the sewers or drains if by so doing she would necessarily use those passing under other parts of the defendants' land in which she had no right.

CROSS, J., said that as there was no sewer at the date of the grants the plaintiff would have to rely on "hereafter to pass." The right could only be treated as the grant of an easement to arise at an uncertain date in the future and was therefore void for perpetuity. It was not validated by s. 162 (1) (d) (iv) of the Law of Property Act, 1925, which was intended to make it clear that if, for example, A had a right of drainage over B's land which was not void for perpetuity, the ancillary right of construction work to make the basic right effective was not to be treated as void for perpetuity because it might be exercised outside the period. The words "passing under" were not to be construed as "exclusively passing under," but the action would fail on the perpetuity point. Judgment for the defendants.

APPEARANCES: Sir Lynn Ungood-Thomas, Q.C., and F. B. Alcock (*Griffinhoofe & Co.*); Nigel Warren, Q.C., and A. J. Balcombe (*Herbert Baron & Co.*).

[Reported by Miss M. G. Thomas, Barrister-at-Law]

#### VARIATION OF TRUSTS: TRANSFER OF FUND TO CANADIAN SETTLEMENT

**In re Seale's Marriage Settlement**

Buckley, J. 7th March, 1961

Adjourned summons.

By an English marriage settlement made in 1931, the trust fund was settled on trust for the wife for life, after her death on protective trusts for the husband for life and after the death of the survivor for the children and remoter issue

of the marriage as the husband and wife jointly or the survivor of them should appoint and, in default, for the children of the marriage in equal shares at twenty-one. There were three children of the marriage, one of whom had attained twenty-one. At the date of the marriage, the husband and wife were domiciled in England but they subsequently emigrated to Canada. The court's approval was sought of an arrangement whereby the trust fund was to be transferred to a Canadian settlement on substantially the same terms as the English settlement.

BUCKLEY, J., said that the court had jurisdiction to approve an arrangement which, in effect, revoked all the trusts of the English settlement in the event of the trust property becoming subject to the trusts of a settlement which would be recognised and enforced in some other jurisdiction. He was satisfied that the arrangement was one of a kind which was sensible and advantageous for all concerned.

APPEARANCES: J. W. Brunyate, P. G. Clough, J. A. Brightman (*Merrimans, for Barton, Thompson & Hutchins, Bournemouth*).

[Reported by Miss V. A. Moxon, Barrister-at-Law]

#### Queen's Bench Division

##### FENCING OF DANGEROUS MACHINERY

**Eaves v. Morris Motors, Ltd.**

Winn, J. 12th October, 1960

Action.

The plaintiff was employed by the defendants as the operator of a Cincinnati horizontal milling machine at their factory. The machine comprised a traversing table which in the course of the operation of the machine moved forward and backward carrying a block in the nature of a vice. Into the block the plaintiff had to insert two bolts and secure them vertically by the tightening of a nut; then by the moving of a lever the plaintiff set the traverse in motion so that the bolts to be milled were carried by the block under the cutting-wheels of the machine. While the plaintiff was operating the machine the block traversed forward and back and stopped, but as the plaintiff was about to remove the bolts from the block it moved forward again. Fearing lest his fingers be drawn into the cutters the plaintiff hastily withdrew his fingers and in so doing cut his left index finger on a burr on one of the bolt heads. He claimed damages against the defendants for breach of statutory duty under s. 14 (1) of the Factories Act, 1937, in failing to fence securely every dangerous part of the machinery.

WINN, J., said that there could be no doubt that the block was part of the machinery, and at the material moment a moving part. Further, the bolts standing in that block were themselves part of the block. If the block itself had had a sharp edge and by moving forward had cut the plaintiff's finger, then it would have been a moving part of the machinery which was dangerous, moving as it was and giving motion to the bolts which were then physically in it. The block comprised the bolts and the bolts in the block were part of the machinery. In other words, the block itself was a dangerous part of the machinery when it moved, because it carried with it those bolts. Therefore, there was a breach of s. 14 which was causative of the injury to the plaintiff. Judgment for the plaintiff.

APPEARANCES: I. Sunderland (*Hewitt & Walters, Birmingham*); R. H. Tucker (*Herbert & Gowers & Co.*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law]

#### SOCIAL CONTACTS BY PSYCHIATRIST WITH PATIENT HELD PROFESSIONAL NEGLIGENCE

**\*Landau v. Werner**

Barry, J. 7th March, 1961

Action.

A psychiatrist of repute undertook in 1949 the treatment of an intelligent middle-aged woman in an anxiety state.

For some months she saw him in his consultation room and wrote to him copiously as part of the therapeutic process, giving or sending him the letters which he later returned to her and which she preserved. She developed towards him deep feelings of love, obsession and bondage, which he explained to her as being part of the process of "transference," and he advised her to continue the treatment, as she was making progress. After six months it was decided that the treatment should cease as the woman was better, though feeling herself to be deeply in love with the doctor. He, taking the view that a sudden withdrawal might cause a relapse, decided on a series of innocent and friendly social contacts with her which continued over some months; but he gradually withdrew from the relationship; and the patient, being by that time emotionally and sexually aroused and distressed, attempted suicide at his home. The doctor thereupon resumed the treatment in a final effort to resolve the transference, but brought it to an end when it had no effect. The woman's mental condition deteriorated to such an extent that she became wholly incapable of work. She decided on proceedings against the doctor, alleging that her illness was caused by his wilful misconduct and professional negligence; but for various reasons those proceedings were delayed for ten years. The doctor denied the charges.

BARRY, J., said that he entirely absolved the doctor from any charge of misconduct; but the decision to embark on social contacts was admittedly a departure from standard practice in this special branch of medicine. A psychiatrist had explosive forces under his control and if a mistake were made the consequences might be disastrous and irrevocable. This doctor had said that his decision was justified by exceptional circumstances; but with the best intentions in the world he had made a tragic mistake. The departure from the recognised standard had resulted in gross deterioration in the patient's health, and on the evidence it would also amount to negligence in treatment. His lordship was not laying down as law that no psychiatrist could in any case take a patient out; but having regard to the state of this patient, he was not satisfied that there was any body of opinion which would have thought it desirable to bring this highly sexed emotional woman, already deeply in love with her doctor, into the kind of intercourse that occurred here. Negligence had been established and there must be judgment for the plaintiff for £6,000 damages. Judgment for the plaintiff.

APPEARANCES: G. R. F. Morris, Q.C., and James Dunlop (C. M. Beck & Co.); Norman Richards, Q.C. (in place of Norman Brodrick, Q.C., who was indisposed) and John Spokes (Le Brasseur & Oakley).

[Reported by Miss M. M. Hill, Barrister-at-Law]

## Probate, Divorce and Admiralty Division

### DIVORCE: APPLICATION TO AMEND PETITION TO RELY ON ADULTERY DISCLOSED IN DISCRETION STATEMENT

Northam v. Northam

Marshall, J. 6th March, 1961

Consolidated suits for divorce.

A wife petitioned for divorce on the ground of cruelty. The husband denied the charge and, by a cross-petition, prayed for divorce on the ground of the wife's cruelty, which she, in turn, denied. The husband asked for the exercise of the court's discretion in respect of his adultery. The suits were consolidated. At the hearing, the husband, in the course of his examination-in-chief, put his discretion statement in evidence. Before his cross-examination began, counsel for the wife applied for leave to amend the wife's petition to

allege the adultery which was disclosed in the husband's discretion statement. The application was opposed.

MARSHALL, J., said that the court's discretion to grant or refuse such an application was wide. A major reason for refusal arose where the granting of leave to amend would involve injustice to any party. In the present case, no injustice of any kind would be done to the husband by granting the application. Moreover, in May, 1960, after the prayer of the husband's petition had been amended to ask for the court's discretion, the wife's solicitors took the very steps which the Court of Appeal, in *Clear v. Clear* [1958] 1 W.L.R. 467, advised a spouse to take if it were desired to rely upon the other spouse's adultery, the commission of which was indicated by the prayer for the court's discretion. The husband's solicitors, however, acting entirely within their rights, refused all information concerning their client's adultery, preferring to wait until the discretion statement was put in evidence, on the sixth day of the hearing, for the disclosure to the wife of the adultery involved. A further consideration was that undue delay would not be caused by the fact that amendment of the wife's petition to allege the husband's adultery would necessitate serving the woman named with the amended petition, since counsel for the husband had informed the court that the solicitors instructing him had been retained by the woman concerned. Finally, one of the grounds upon which the application was opposed was that the husband's adultery took place after the spouses had parted and was in no way involved with the charges of cruelty which were the issues in the suits. His lordship was assisted in reaching his decision by the fact that in *Clueit v. Clueit* [1958] 1 W.L.R. 463, Davies, J., granted leave to amend to rely on adultery committed after the spouses had parted which was in no way involved in the cross-allegations of desertion in the suit. The application for leave to amend would be granted.

APPEARANCES: James Stirling, Q.C., and Geoffrey Crispin (Hyde, Mahon & Pascall, for Clayton & Gibson, Newcastle upon Tyne); R. J. A. Temple, Q.C., and Roy Beldam (Rodgers, Horsley & Burton).

[Reported by Miss C. J. Ellis, Barrister-at-Law]

### DIVORCE: ADULTERY: DELAY

England v. England and Easter

Karminski, J. 6th March, 1961

Undefended suit for divorce.

A wife left her husband in 1952. Shortly afterwards, the husband discovered that she was living in adultery with F, but took no legal proceedings. The wife continued to live with F until his death in 1957. Shortly after F's death, the wife went to live with the co-respondent, by whom she had a child in August, 1959. When the husband learned of the wife's adultery with the co-respondent, and of the birth of the child, he petitioned for divorce on the ground of the adultery between the wife and the co-respondent. The suit was undefended. The court adjourned the case for argument on behalf of the Queen's Proctor on the question whether the husband's failure to take action in relation to the adultery with F constituted delay.

KARMINSKI, J., said that in *Rutter v. Rutter* (1920), 123 L.T. 585, the husband committed adultery with one woman from 1914 until 1919, and then went to live with a second woman. In 1920, the wife petitioned for divorce, alleging adultery with both women. Sir Henry Duke, P., was reported as having said: "If you can prove adultery with the second woman, the question of delay fails." His lordship did not think that the President had intended to say that, if you could prove adultery with a second woman, the question of delay in respect of adultery with the first woman never

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**Ipswich and East Anglia.**—WOODCOCK & SON, 16 Arcade Street, Ipswich. Tel. 54352 (2 lines). Specialists in Selling Country Property and Farms. Established 1850.

**Woodbridge and East Suffolk.**—ARNOTT & CALVER, Auctioneers and Valuers. Est. 1870. Tel. 179.

**SURREY**

**Addiscombe, Shirley, Croydon.**—MILLER, WILKINS AND CO., Auctioneers, Surveyors and Valuers, 191 Lower Addiscombe Road. Tel. Addiscombe 2233/4; and 142 Wickham Road, Shirley. Tel. Addiscombe 4021.

**Camberley.**—GIDDY & GIDDY, Estate House, London Road. Tel. 1919.

**Camberley (Hants and Berks Borders).**—SADLER AND BAKER, Chartered Auctioneers and Estate Agents, 95 High Street. Est. 1880. Tel. 4331 (3 lines).

**Caterham and District.**—Sanderstead to Purley.—J. C. O'BRIEN, Station Avenue, Caterham. Tel. 4255 and 348. Lifford Road, Sanderstead. Tel. 4426.

**Cobham.**—EWBANK & CO., in association with Mann and Co. Est. 1891. Tel. 47. Offices throughout West Surrey.

**Coulsdon.**—SINDEN, TOMKINS & KING, F.A.L.P.A., Valuers, Surveyors and Estate Agents, 26 Chipstead Valley Road. Tel. UPLANDS 0600.

**Croydon.**—BLAKE, SON & WILLIAMS. Est. 1796. Chartered Auctioneers and Estate Agents, Surveyors and Valuers, 51 High Street, Croydon. CROYDON 7155/6.

**Croydon, Addiscombe and Wallington.**—SOWDITCH & GRANT, (Est. 1881), Surveyors, Valuers, Auctioneers, 103/105 George Street, Croydon. Tel. CRO 0138/9.

**Croydon and District.**—JOHN P. DICKINS & SONS, Surveyors, Valuers and Estate Agents. Est. 1882. 2 and 4 George Street, Croydon. CROYDON 3128/9/30.

**Croydon and London.**—HAROLD WILLIAMS AND PARTNERS, Chartered Surveyors, Valuers, Chartered Auctioneers and Estate Agents, 80 High Street, Croydon. Tel. Croydon 1931. And at Temple Chambers, Temple Avenue, E.C.4. Tel. Ludgate Circus 9288.

**Croydon and Sutton.**—SAINT, SYMINGTON AND STEDMAN, Surveyors, Auctioneers and Valuers, 106 High Street, Croydon. Tel. CRO 2216/7. And at 6 Charn Road, Sutton. Tel. VIG 7816/7.

**Dorking.**—ARNOLD & SON, Auctioneers & Surveyors, 171 High Street and branches. Est. 1855. Tel. 2201/2.

**Dorking.**—WHITE & SONS, 104 High Street. Agricultural and General Surveyors and Valuers. Tel. 3255.

**Dorking.**—PEARSON, COLE & SHORLAND, Surveyors, Valuers and Auctioneers. 279 High Street, Dorking. Tel. 3897/8. And at Reigate.

**Dorking, Bookham and Eghingham.**—CUBITT AND WEST, Tel. Dorking 2212, Bookham 2744. Valuers, Surveyors, Estate Agents.

**Dorking and Reigate.**—A. R. & J. GASCOIGNE-PEES, F.A.L.P.A., Auctioneers, Estate Agents and Surveyors, 258/260 High Street, Dorking. Tel. 4071/2. 6 Church Street, Reigate. Tel. 4422/3. And at Leatherhead and Epsom.

**Epsom and Leatherhead.**—A. R. & J. GASCOIGNE-PEES, F.A.L.P.A., Auctioneers, Estate Agents and Surveyors, 21 High Street, Epsom. Tel. 4045/6. 4 Bridge Street, Leatherhead. Tel. 4133/4. And at Reigate and Dorking.

**Esher.**—EWBANK & CO., in association with Mann & Co. Est. 1891. Tel. 3537/8. Offices throughout West Surrey.

**Esher.**—W. J. BELL & SON, Chartered Surveyors, Valuers, Auctioneers and Estate Agents, 51 High Street. Tel. Esher 3551/2.

**Ewell, Epsom, Leatherhead and adjoining areas.**—DOUGLAS, F.A.L.P.A., 10 High Street, Epsom. Tel. 2342/4. (Four other offices.)

**Ewell.**—WILTSHIRES, Estate Agents, Surveyors, Auctioneers and Valuers, 55 High Street. Tel. Ewell 1665/6.

**Farnham.**—H. B. BAVERSTOCK & SON, Chartered Auctioneers and Estate Agents, 4 Castle Street. Tel. 5724 (2 lines).

**Farnham.**—CUBITT & WEST, Tel. Farnham 5261. Valuers, Surveyors, Estate Agents.

**SURREY (continued)**

**Farnham.**—EGGAR & CO., Incorporating Curtis & Watson, Surveyors, Auctioneers, Land & Estate Agents, 74 Castle Street. Tel. 6221/3. And at Alton and Basingstoke, Hants.

**Farnham.**—GERMAN, ADDY & CO. (Est. 1903). Chartered Auctioneers and Estate Agents, Surveyors and Valuers, 111 West Street. Tel. 5283/4.

**Farnham.**—WHITEHEAD & WHITEHEAD, amal. HEWETT & LEE, 32 South Street. (Tel. 6277).

**Godalming.**—H. B. BAVERSTOCK & SON, Chartered Auctioneers and Estate Agents, Estate Offices. Tel. 1722 (5 lines).

**Guildford.**—MANN & CO., Est. 1891, 22 Epsom Road. Tel. 62911/2. Offices throughout West Surrey.

**Guildford.**—MESSENGER, MORGAN & MAY, Chartered Surveyors, 8 Quarry Street. Tel. 2992/4.

**Guildford.**—WHITEHEAD & WHITEHEAD, amal. HEWETT & LEE, 144 High Street. (Tel. 2811/2).

**Haslemere.**—H. B. BAVERSTOCK & SON, Chartered Auctioneers and Estate Agents, 20 High Street. Tel. 1207.

**Haslemere and Hindhead.**—CUBITT & WEST, Tel. Haslemere 2345/6/7, Hindhead 63. Valuers, Surveyors, Estate Agents.

**Kingston.**—A. G. BONSOR, STEVENS & CO., Est. 1899, 82 Eden Street. Tel. KIN 0022.

**Kingston.**—NIGHTINGALE, PAGE & BENNETT, Est. 1825, Chartered Surveyors, 18 Eden Street. Tel. KIN 3356.

**Kingston upon Thames and Area.**—BENTALLS ESTATE OFFICES (L. J. Smith, F.A.L.P.A., P. F. Parkinson, B.Sc., A.A.L.P.A.), Wood St. KIN 1001. Sales, surveys, property and chattel valuations, lettings, management.

**Leatherhead, Ashted, Oxshott.**—CHAS. OSENTON AND CO., Chartered Auctioneers, 36 North Street, Leatherhead. (Tel. 3001/2); Ashted 2382, Oxshott 3344.

**Mitcham.**—LEONARD DAVEY & HART, Chartered Surveyors, Auctioneers, Valuers and Estate Agents, Upper Green. Tel. MITCHAM 6101/2.

**Oxshott.**—W. J. BELL & SON, Chartered Surveyors, Valuers, Auctioneers and Estate Agents, 51 High Street, Esher. Tel. Esher 4331 (2 lines).

**Redhill and Mersham.**—E. H. BENNETT & PARTNERS, Auctioneers and Valuers. Tel. Redhill 3672. Mersham 2234/5.

**Reigate.**—MARTEN & CARNABY, Surveyors, Auctioneers and Valuers, 23 Church Street. Tel. 3361/2.

**Reigate.**—PEARSON, COLE & SHORLAND, Surveyors, Valuers and Auctioneers, 4 Bell Street, Reigate. Tel. 4371/2. And at Dorking.

**Richmond.**—ACLAND & CO., Estate Agents, Surveyors and Valuers. Rents collected. 27 Kew Road (Opposite Richmond Station). Tel. RIC 4811/2.

**Richmond.**—PENNINGTONS, 23 The Quadrant, Auctions, Valuations, Surveys. Rents collected. Tel. RIC 2255 (3 lines).

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**Surbiton.**—E. W. WALLAKER & CO., F.A.L.P.A., Surveyors, Valuers, Auctioneers and Estate Agents, 56/7 Victoria Road, Surbiton, Surrey. Tel. Elmbridge 5381/4, and at Chessington, Surrey, Shoreham-by-Sea and Lancing, Sussex. (Chartered Surveyor D. J. Peachey, F.R.I.C.S.)

**Sutton.**—DOUGLAS GRAHAM & CO., Estate Agents, Property Managers, 269 High Street. Tel. VIG 0026/7/8. And at Thornton Heath, Norbury and Piccadilly, W.1.

**Sutton.**—IDRIS JONES & PARTNERS, F.R.I.C.S., F.A.I., 22 The Arcade, Sutton. Vigilant 0182; and at 30 Abbey House, Westminster.

**Thornton Heath.**—LEONARD DAVEY & HART, Chartered Surveyors, Auctioneers, Valuers and Estate Agents, 781 London Road. Tel. THO 6211/2.

**Thornton Heath.**—DOUGLAS GRAHAM & CO., Estate Agents and Property Managers, 800 London Road. Tel. THO 3888 (4 lines). And at Norbury, Sutton and Piccadilly, W.1.

**Virginia Water and Westworth.**—GOSLING AND MILNER, Station Approach, Virginia Water. Tel. Westworth 2277. And at 8 Lower Grosvenor Place, S.W.1. Tel. Victoria 3634.

**Wallington.**—WILLIAM A. DAVIS & PARTNERS, 4 Stanley Park Road. Tel. Wallington 2567.

**Walton.**—MANN & CO., Est. 1891, 38 High Street. Tel. 2331/2. Offices throughout West Surrey.

**Walton and Weybridge.**—HIGBY & CHARD Consultants: George Gaen, M.A., F.R.I.C.S., V. C. Lawrence, F.R.I.C.S., 45 High Street, Walton-on-Thames. Tel. 24087/8.

**Walton/Weybridge.**—WARING & CO. Est. 1890. Surveyors, Estate Agents, Auctioneers and Valuers. Tel. Walton-on-Thames 24151/2.

**West Byfleet.**—MANN & CO., Incorporating Ewbank and Co., Est. 1891. Tel. 3288/9. Offices throughout West Surrey.

**Weybridge.**—EWBANK & CO., in association with Mann and Co. Est. 1891. Tel. 2323/5. Offices throughout West Surrey.

**Weybridge and District.**—J. E. PURDIE & SON, Chartered Surveyors and Estate Agents, 1 and 3 Queens Road, Weybridge. Tel. 3307 (3 lines), and at Walton-on-Thames.

**Weybridge and District.**—WATERER & SONS, Chartered Auctioneers and Estate Agents, Surveyors, etc. Tel. 3838/9.

(continued on p. xix)

**SURREY (continued)**

**Woking.**—HOAR & SANDERSON, 5 Church Path. Tel. 3263/4. Eleven associated Surrey offices.

**Woking.**—MANN & CO., Est. 1891, Chartered Surveyor. Tel. 3800 (6 lines). Offices throughout West Surrey.

**Woking.**—HOLDHAM, CLARKE & EDGELEY, Chartered Surveyors. Tel. 3419; and at Guildford.

**SUSSEX**

**Angmering-on-Sea.**—Rustington, Worthing and Storrington.—BERNARD TUCKER & SON, Est. 1890. L. B. Tucker, F.R.I.C.S., F.A.I., G. H. E. Evans, F.A.L.P.A., W. J. Brown, F.A.I. Tels. Rustington 1, Worthing 5708/9. Storrington 535.

**Arundel and Rustington.**—HEASMAN & PARTNERS, Tel. Arundel 2323, Rustington 900.

**Bexhill-on-Sea.**—JOHN BRAY & SONS (Est. 1864), Estate Agents, Auctioneers and Valuers, 1 Devonshire Square. Tel. 14.

**Bexhill-on-Sea and Cooden.**—ERNEST SHEATHER, F.A.I., & PARTNER, Auctioneers and Estate Agents, 14 St. Leonards Road. Tel. 350, 351 and 2280.

**Bexhill-on-Sea and Little Common.**—RICHES & GRAY (Est. 1883), Chartered Auctioneers and Estate Agents, 25 Sea Road, Bexhill-on-Sea. Tel. 34/5. And at 25 Cooden Sea Road, Little Common. Tel. Cooden 2939.

**Brighton.**—RAYMOND BEAUMONT, F.R.I.C.S., F.A.I., Chartered Surveyors, Chartered Auctioneers and Estate Agents, 35 East Street. Tel. Brighton 20163.

**Brighton.**—MELLOR & MELLOR, Chartered Auctioneers and Estate Agents, 110 St. James's Street. Tel. 682910.

**Brighton and Worthing.**—H. D. S. STILES & CO., F.R.I.C.S., F.A.I. (special rating diploma), 6 Pavilion Buildings. Tel. Brighton 23244 (4 lines). 10 King's Bench Walk, Temple, E.C.4. Tel. Central 3356. 3 The Steyne, Worthing. Tel. Worthing 9192/3.

**Brighton.**—FRANK STONE & PARTNERS, F.A.L.P.A., 84 Queen's Road. Tel. Brighton 29252/3.

**Brighton and Hove.**—WILLIAM WILLET, LTD., Auctioneers and Estate Agents, 52 Church Road, Hove. Tel. Hove 34055. London Office, Sloane Square, S.W.1. Tel. Sloane 8141.

**Brighton, Hove and Surrounding Districts.**—MAURICE P. HATCHWELL, F.R.I.C.S., F.A.I., Chartered Surveyor, Chartered Auctioneer and Estate Agents, 4 Bartholomews, Brighton, 1. Tel. Brighton 23107.

**Brighton and Hove and Surrounding Districts.**—C. HORTON LEDGER, F.A.I., Established 1885, Chartered Auctioneer and Estate Agent, Surveyor and Valuer, "Sussex House," 126/7 Western Road, Hove, Tel. Sussex. 1291.

**Chichester and Bognor Regis.**—WHITEHEAD & WHITEHEAD, Chartered Auctioneers and Estate Agents, South Street, Chichester. Tel. 3031 (5 lines). Station Road, Bognor Regis. Tel. 2237/8.

**Crawley.**—WM. WOOD, SON & GARDNER, Estate Agents, Surveyors and Valuers. Tel. Crawley 1.

**Crowborough.**—DONALD BEALE & CO., Auctioneers, Surveyors and Valuers. The Broadway. Tel. Crowborough 3333.

**Eastbourne.**—FRANK H. BUDD, LTD., Auctioneers, Surveyors, Valuers, 1 Bolton Road. Tel. 1860.

**Eastbourne.**—A. C. DRAYCOTT, Chartered Auctioneers and Estate Agents, 12 Gildredge Road. Tel. Eastbourne 1285.

**Eastbourne.**—HEFFORD & HOLMES, F.A.I., Chartered Auctioneers and Estate Agents, 51 Gildredge Road, Tel. Eastbourne 7840.

**Eastbourne.**—OAKDEN & CO., Estate Agents, Auctioneers and Valuers, 24 Cornfield Road. Est. 1897. Tel. 1234/5.

**Eastbourne and District.**—FARNHAM & CO., Auctioneers, Estate Agents and Valuers, 6 Terminus Road, Eastbourne. Tel. 4433/4/5. Branch at 87 Eastbourne Road, Lower Willington, and 4 Grand Parade, Polegate.

**East Grinstead.**—Messrs. P. J. MAY (P. J. May and A. L. Aphorpe, F.R.I.C.S., F.A.I., M.R.San.I.), 2 London Road. Tel. East Grinstead 315/6.

**East Grinstead.**—TURNER, RUDGE & TURNER Chartered Surveyors. Tel. East Grinstead 700/1.

**Hasocks and Mid-Sussex.**—AYLING & STRUDWICK Chartered Surveyors. Tel. Hasocks 882/3.

**Hastings, St. Leonards and East Sussex.**—DYER & OVERTON (H. B. Dyer, D.S.O., F.R.I.C.S., F.A.I.; F. R. Hynard, F.R.I.C.S.), Consultant Chartered Surveyors. Est. 1892. 6-7 Havelock Road, Hastings. Tel. 5661 (3 lines).

**Hastings, St. Leonards and East Sussex.**—WEST (Godrey, F.R.I.C.S., F.A.I.) & HICKMAN, Surveyors and Valuers, 50 Havelock Road, Hastings. Tel. 6688/9.

**Haywards Heath and District.**—DAY & SONS, Auctioneers and Surveyors, 115 South Road. Tel. 1580. And at Brighton and Hove.

**Haywards Heath and Mid-Sussex.**—BRADLEY AND VAUGHAN, Chartered Auctioneers and Estate Agents. Tel. 91.

**Horsham.**—KING & CHASEMORE, Chartered Surveyors, Auctioneers, Valuers, Land and Estate Agents. Tel. Horsham 3355 (3 lines).

**Horsham.**—WELLER & CO., Surveyors, Auctioneers, Valuers, Estate Agents. Tel. Horsham 3311. And at Guildford, Cranleigh and Henfield.

**Hove.**—DAVID E. DOWLING, F.A.L.P.A., Auctioneer, Surveyor, Valuer & Estate Agent. 75 Church Road, Hove. Tel. Hove 37213 (3 lines).

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arose. If the President had meant that, he, his lordship, would reluctantly have to differ. In the present case, the husband's failure to take action in regard to the wife's adultery with *F* constituted, in all the circumstances, culpable delay. That was a discretionary bar to relief, and the question arose whether the court should, in the exercise of its discretion, in accordance with the principles laid down in *Blunt v. Blunt* [1943] A.C. 517, grant the husband a decree nisi. This being a case in which the court should exercise its discretion in favour of the husband, there would be a decree nisi.

APPEARANCES: *Patrick Garland (Hatten, Asplin, Jewers & Glenny)*; *Colin Duncan (Treasury Solicitor)*.

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

#### CODICIL: LATENT AMBIGUITY: ADMISSIBILITY OF EVIDENCE OF INTENTION

In the Estate of White, deceased

Scarman, J. 8th March, 1961

Motion.

A testatrix executed a will on 23rd November, 1955. On 4th March, 1958, she executed a second will containing a revocation clause and varying the provisions of the first will, but naming the same persons as executors as in the earlier will. On 5th August, 1960, the testatrix executed a codicil described as a codicil to the will dated 23rd November, 1955, by which she revoked the appointment of the "executors of my will" and appointed a bank in their place. The codicil ended with the words: "in all other respects I confirm my said will." Both wills were kept by the bank, the earlier will in a sealed envelope, the later in open safe custody. When the testatrix decided to change the executorship, she wrote to the bank requesting them to forward to her solicitors "the sealed envelope said to contain my will," for the codicil to be drafted. The bank complied with this request, overlooking the fact that they held the later will. The result was that when the codicil was drafted, it was described as a codicil to the will of 23rd November, 1955. When the codicil was executed, neither will was before the testatrix. The testatrix died in November, 1960, aged 86. The bank, as executor, moved the court for an order admitting to probate the will of 4th March, 1958, and the codicil of 5th August, 1960, but omitting the reference in the codicil to the will of 23rd November, 1955. The motion was unopposed.

SCARMAN, J., said that the 1955 will was revoked by the 1958 will. On the face of it, the codicil revived the 1955 will. Section 22 of the Wills Act, 1837, provided that a revoked will could be revived by a codicil only where an intention to revive was shown. In the circumstances of the present case, the words in the codicil "I confirm my said will" contained a latent ambiguity. Evidence was therefore admissible to show that the testatrix intended to confirm the 1958 will and not the 1955 will. As the evidence showed such intention, the order prayed for in the motion would be made. Order accordingly.

APPEARANCES: *J. F. Kingham (Wood & Sons)*.

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

#### APPLICATION TO RESCIND DECREE NISI AND SUBSTITUTE DECREE OF JUDICIAL SEPARATION

\**James v. James*

Scarman, J. 8th March, 1961

Summons for hearing in open court.

On 27th July, 1960, a wife was granted in an undefended suit a decree nisi of divorce. Fearing that if the decree were made absolute the husband would turn her and the two children of the family out of the house in which they were living, which was the former matrimonial home and was owned by the husband, the wife applied for the decree nisi to be rescinded and for a decree of judicial separation to be substituted for it. The Queen's Proctor was informed of the application, which was not opposed by the husband.

SCARMAN, J., said that the test upon such an application was laid down by Karminski, J., in *Davies v. Davies* [1956] P. 212, and was whether there was any reason why the court should not exercise its discretion in favour of altering the relief in the manner applied for. There was no suggestion that the wife sought to put financial pressure upon the husband, or that she was prompted by any other improper or insincere motive. The decree nisi would therefore be rescinded, save only as to the order for costs, and there would be a decree of judicial separation, the husband being ordered to pay the costs of the application. Order accordingly.

APPEARANCES: *M. G. Polson (Coode, Kingdon, Cotton & Ward, for Derrick Bridges & Co., Barnet)*.

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

#### Court of Criminal Appeal

##### CRIME: WITNESSES CONDITIONALLY BOUND OVER: DEPOSITIONS TO BE SUPPLIED TO DEFENCE

PRACTICE NOTE

Lord Parker, C.J., Winn and Widgery, J.J. 6th March, 1961

LORD PARKER, C.J., said that the attention of the court had been drawn to the fact that defending counsel at quarter sessions and at assizes had on occasion been taken by surprise to find that witnesses whom they expected to be able to cross-examine had been conditionally bound over. The original depositions would, of course, contain the letters C.B.O. against the witnesses conditionally bound over, and in addition there would be attached a form setting out the names of those witnesses: cf. form 23 of the Magistrates' Courts (Forms) Rules, 1952, and r. 12 (2) (g) of the Magistrates' Courts Rules, 1952. When, however, the defence obtained copies of those depositions, either from the committing court or the court of trial, it seemed that on occasions the letters C.B.O. did not appear and form 23 was not attached. After consulting the Home Office, the court had decided to issue this practice note drawing the attention of justices' clerks, clerks of the peace and clerks of assize to this situation. Care must be taken to ensure that accurate copies of the depositions were made and as an added precaution the court considered that form 23 should in every case be attached to the copies, even if it only disclosed that no witnesses were conditionally bound over. In that way it was hoped to avoid the occurrence of mistakes in the future.

[Reported by Mrs. E. M. WELLWOOD, Barrister-at-Law]

#### Societies

The annual general meeting of the ISLE OF WIGHT LAW SOCIETY was held on 2nd March. Mr. R. W. Beasley was re-elected president of the society for the coming year and Mr. W. J. Eldridge vice-president. Mr. P. E. Gill was re-elected honorary treasurer and Mr. E. A. McCullagh was re-elected honorary secretary.

At the annual general meeting of the WARWICKSHIRE LAW SOCIETY, LTD., held at the Hotel Leofric, Coventry, on 22nd February, the following officers were elected—president: Mr. H. Smith; vice-president: Mr. W. H. Hodson; hon. secretary: Mr. W. G. Dabbs, LL.B.; hon. treasurer: Mr. W. H. D. Jensen, A.A.C.C.A., A.C.I.S.

## IN WESTMINSTER AND WHITEHALL

## HOUSE OF LORDS

## PROGRESS OF BILLS

## Read First Time:—

Mersey Tunnel Bill [H.C.] [7th March.

## Read Second Time:—

Post Office Bill [H.C.] [9th March.

## Read Third Time:—

Betting Levy Bill [H.C.] [9th March.

Nurses (Amendment) Bill [H.C.] [7th March.

## In Committee:—

Suicide Bill [H.L.] [9th March.

## HOUSE OF COMMONS

## A. PROGRESS OF BILLS

## Read First Time:—

Protection of Tenants (Local Authorities) Bill [H.C.] [7th March.

To provide security of tenure for tenants of local authorities, authorities owning or managing new towns, housing associations, housing trusts and other similar bodies.

Television (Higher Education Service) Bill [H.C.] [7th March.

To provide for the establishment of a Higher Education Service on television.

## Read Second Time:—

Companies (Floating Charges) (Scotland) Bill [H.C.] [10th March.

Game Licences and Gun Licences (Miscellaneous Provisions), etc. Bill [H.C.] [10th March.

Police Federation Bill [H.C.] [10th March.

Rural Water Supplies and Sewerage Bill [H.C.] [10th March.

## In Committee:—

National Health Service Contributions Bill [H.C.] [9th March.

## B. QUESTIONS

## HOME TELEPHONES FOR LAWYERS

Asked why lawyers were not given priority in the supply of home telephones, Mr. BEVINS replied that priority was given to those concerned with matters of life and death: doctors, nurses and ministers of religion. In addition some telephones were needed in the national interest, e.g., for Members of Parliament, and by the sick and disabled and those dependent on a home telephone for their livelihood. Discretion was given to telephone managers, and he was sure that the position of lawyers was given due weight. [8th March.

## STATUTORY INSTRUMENTS

- Aircraft** (Exemption from Seizure on Patent Claims) Order, 1961. (S.I. 1961 No. 332.) 5d.  
**Anglo-Norwegian Sea Fisheries** Order, 1961. (S.I. 1961 No. 342.) 8d.  
**Authorised Officers** (Meat Inspection) Regulations, 1961. (S.I. 1961 No. 368.) 5d.  
**Draft Betting and Gaming** (Repeal of Local Acts) (Scotland) Order, 1961. 4d.  
**Carriage by Air** (Isle of Man) Order, 1961. (S.I. 1961 No. 333.) 5d.

**Carriage by Air** (Non-international Carriage) (Isle of Man) Order, 1961. (S.I. 1961 No. 334.) 5d.

**County Court Fees** (Amendment) Order, 1961. (S.I. 1961 No. 355.) 5d. See p. 261, *post*.

**Foreign Compensation** (Financial Provisions) Order, 1961. (S.I. 1961 No. 336.) 5d.

**Gwynedd River Board** (Transfer of Powers of the Afon Ganol Internal Drainage Board) Order, 1961. (S.I. 1961 No. 353.) 5d.

**Importation of Carcases and Animal Products** (Amendment) Order, 1961. (S.I. 1961 No. 329.) 5d.

**King's Lynn-Sleaford-Newark Trunk Road** (Coddington Diversion) Order, 1961. (S.I. 1961 No. 328.) 5d.

**Lake Windermere** (Collision Rules) Order, 1961. (S.I. 1961 No. 343.) 6d.

**Lincolnshire River Board** (Black Sluice Internal Drainage District) (Alteration of Boundaries and Electoral Districts) Order, 1961. (S.I. 1961 No. 376.) 6d.

**London-Edinburgh-Thurso Trunk Road** (Boroughbridge By-Pass) Order, 1961. (S.I. 1961 No. 366.) 6d.

**London-Edinburgh-Thurso Trunk Road** (Newark By-Pass) Order, 1961. (S.I. 1961 No. 325.) 6d.

**London-Edinburgh-Thurso Trunk Road** (Newark By-Pass, Link Roads) Order, 1961. (S.I. 1961 No. 326.) 5d.

**London Traffic** (Prescribed Routes) (Bermondsey) Regulations, 1961. (S.I. 1961 No. 348.) 4d.

**London Traffic** (Prescribed Routes) (Dartford) Regulations, 1961. (S.I. 1961 No. 330.) 5d.

**London Traffic** (Prescribed Routes) (Staines) (No. 2) Regulations, 1961. (S.I. 1961 No. 320.) 4d.

**London Traffic** (Prescribed Routes) (Swanscombe) Regulations, 1961. (S.I. 1961 No. 349.) 5d.

**London Traffic** (Prohibition of Waiting) (Grays) Regulations, 1961. (S.I. 1961 No. 315.) 5d.

**Draft National Insurance** (Industrial Injuries) (Colliery Workers Supplementary Scheme) Amendment Order, 1961. 1s. 2d.

**National Insurance** (Modification of Teachers Superannuation) (Scotland) (No. 1) Regulations, 1961. (S.I. 1961 No. 324 (S. 20).) 5d.

**Northern Rhodesia** (Native Trust Land) (Amendment) Order in Council, 1961. (S.I. 1961 No. 335.) 6d.

**Road Traffic and Roads Improvement Act, 1960** (Commencement No. 2) Order, 1961. (S.I. 1961 No. 327 (C. 3).) 4d. See p. 243, *ante*.

**Rules of the Air and Air Traffic Control** (Amendment) Regulations, 1961. (S.I. 1961 No. 375.) 4d.

**Stopping up of Highways Orders, 1961:—**

County Borough of Birkenhead (No. 1). (S.I. 1961 No. 363.) 5d.

County of Chester (No. 2). (S.I. 1961 No. 364.) 5d.

County of Durham (No. 3). (S.I. 1961 No. 356.) 5d.

County Borough of Great Yarmouth (No. 1). (S.I. 1961 No. 347.) 5d.

City and County of Kingston upon Hull (No. 2). (S.I. 1961 No. 357.) 5d.

City and County Borough of Leeds (No. 5). (S.I. 1961 No. 365.) 5d.

County of Lincoln—Parts of Lindsey (No. 4). (S.I. 1961 No. 358.) 5d.

London (No. 9). (S.I. 1961 No. 359.) 5d.

County Borough of West Ham (No. 1). (S.I. 1961 No. 346.) 5d.

**Superannuation** (Transfers between the Civil Service and Public Boards) (Amendment) Rules, 1961. (S.I. 1961 No. 377.) 5d.

**Wages Regulation** (Cotton Waste Reclamation) Order, 1961. (S.I. 1961 No. 344.) 6d.

**Wages Regulation** (Paper Bag) Order, 1961. (S.I. 1961 No. 345.) 8d.

**Welfare Foods** (Northern Ireland) (Amendment) Order, 1961. (S.I. 1961 No. 367.) 5d.

# REGISTER OF

## Auctioneers, Valuers, Surveyors, Land and Estate Agents

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**THE ADVERTISEMENT MANAGER, SOLICITORS' JOURNAL, OYEZ HOUSE, BREAMS BUILDINGS, FETTER LANE, E.C.4. CHANCERY 6855****PUBLIC NOTICES****CO-OPERATIVE INSURANCE  
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Applications stating age, qualifications and experience, together with the names of two referees, should be received by me not later than the 4th April, 1961.

H. SMITH,  
Solicitor.

Co-operative Insurance Soc. Ltd.,  
109 Corporation Street,  
Manchester, 4.

**MANCHESTER CORPORATION  
TOWN CLERK'S DEPARTMENT**

Applications are invited for the post of **ASSISTANT SOLICITOR**, Salary Grade A.P.T. IV (£1,140–£1,310 per annum). Local Government experience desirable but not essential. March finalists awaiting admission would be considered. Particulars of age, education and experience should be sent with the names of two referees to the Town Clerk, Town Hall, Manchester, 2, by 27th March, 1961.

**ROYAL COUNTY OF BERKSHIRE**

Applications are invited for the post of **JUNIOR ASSISTANT SOLICITOR**. Salary within A.P.T. III/IV (£960–£1,310). Previous local government experience desirable but not essential.

Further particulars and application form from the Clerk of the Council, Shire Hall, Reading. Closing date 8th April, 1961.

**AMENDED ADVERTISEMENT****BOROUGH OF WEMBLEY  
APPOINTMENT OF SECOND CLASS  
LEGAL ASSISTANT**

Applications for the above established appointment are invited from persons possessing, in particular, a sound knowledge of conveyancing.

Salary A.P.T. II (£815–£960 per annum) plus up to £40 per annum London "Weighting" Allowance.

Applications, stating age, experience, present and past appointments, disclosing any relationship to a member or Senior Officer of the Council and giving the names and addresses of two referees, must reach the undersigned by 27th March, 1961.

Housing accommodation not provided. Canvassing disqualifies.

N. CUMPTSY,  
Town Clerk.

Town Clerk's Office,  
Town Hall,  
Wembley,  
Middlesex.  
8th March, 1961.

**CENTRAL COUNCIL OF PROBATION  
COMMITTEES IN ENGLAND  
AND WALES****APPOINTMENT OF SECRETARY**

Applications are invited from Barristers or Solicitors or other suitably qualified persons for the above appointment on a part-time basis, for which the Central Council is prepared to offer a salary of £1,000 per annum. Preference will be given to applicants having available office accommodation and clerical assistance. Financial arrangements would be made with the successful applicant or his employing authority in respect of these services and other usual office expenses. To assist the Secretary, it is envisaged that a full-time clerical assistant, with Committee experience, will also be appointed.

Forms of application, together with particulars of duties involved, may be obtained from the undersigned, Ref.: C.C.P.C., to be returned not later than Saturday, 1st April, 1961.

K. GOODACRE,  
Acting Secretary  
(Clerk of the Peace, Middlesex).

Guildhall,  
Westminster, S.W.1.  
6th March, 1961.

**SURREY COUNTY COUNCIL  
ASSISTANT SOLICITOR**

Applications for this post, Grade A.P.T. V (£1,310–£1,525 inclusive of London weighting), stating age, qualifications, experience, with names and addresses of two referees, to be under-signed by 1st April, 1961. Previous local government experience preferable. March finalists awaiting admission would be considered.

W. W. RUFF,  
Clerk of the Council.

County Hall,  
Kingston-upon-Thames.

**BIRMINGHAM REGIONAL HOSPITAL  
BOARD****APPOINTMENT OF ASSISTANT  
SOLICITOR**

Assistant Solicitor required in the office of the Board's Legal Adviser. Excellent opportunity for newly-qualified solicitor to obtain experience. Salary on scale £1,020–£1,260 per annum. Superannuable. Applications should be submitted to the undersigned, stating age and experience and naming two referees by 19th April, 1961.

W. F. NEWSTEAD,  
Secretary to the Board.

10 Augustus Road,  
Edgbaston,  
Birmingham, 15.

**TRENT RIVER BOARD****APPOINTMENT OF LEGAL ASSISTANT  
(UNADMITTED)**

Applications are invited for the above appointment at a salary range within A.P.T. Grades III–IV (£960–£1,310 per annum). Commencing salary according to qualifications and experience. N.J.C. Conditions.

Local Government experience is not essential but applicants must be able to carry through conveyancing and allied transactions with minimum supervision and should have experience in general legal work.

Particulars of duties, conditions and method of application obtainable from the Clerk of the Board, 206 Derby Road, Nottingham, before 5th April, 1961.

**ESHER URBAN DISTRICT COUNCIL  
ASSISTANT SOLICITOR**

Applications are invited for this appointment within Grade A.P.T. V (£1,355–£1,525, inclusive of London weighting), from Solicitors or Barristers. Duties include conveyancing, advocacy and general legal work. Local government experience not essential. Commencing salary according to qualifications and experience.

Applications, giving full information as to age, qualifications and experience together with names and addresses of two referees, to reach the undersigned by 27th March, 1961.

FREDERICK EDWARDS,  
Clerk of the Council.

Council Offices,  
Esher,  
Surrey.

**SURREY COUNTY COUNCIL  
SECOND ASSISTANT SOLICITOR**

Applications for this post (Grade D, £1,710 by £70/£55–£1,975), stating age, qualifications, legal and administrative experience, with names and addresses of two referees, to be under-signed by 27th March, 1961.

Previous local government experience essential.

W. W. RUFF,  
Clerk of the Council.

County Hall,  
Kingston-upon-Thames.

*continued on p. xxi*

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## SELECTED APPOINTED DAYS

March 3rd	Wages Regulation (Retail Bespoke Tailoring) (England and Wales) Order, 1961. (S.I. 1961 No. 252.)
6th	Bankruptcy (Amendment) Rules, 1961. (S.I. 1961 No. 317.)
	Companies (Winding-up) (Amendment) Rules, 1961. (S.I. 1961 No. 318.)
	Foreign Compensation (Financial Provisions) Order, 1961. (S.I. 1961 No. 336.)

## March (continued)

13th	Wages Regulation (Cotton Waste Reclamation) Order, 1961. (S.I. 1961 No. 344.)
15th	Road Traffic Act, 1956, s. 2, as respects vehicles first registered on or after 1st January, 1937, and before 1st January, 1946.
	Wages Regulation (Paper Bag) Order, 1961. (S.I. 1961 No. 345.)
21st	Road Traffic and Roads Improvement Act, 1960, ss. 11, 13 (1) to (7), (9), (10).

## COUNTY COURT FEES INCREASED

The County Court Fees (Amendment) Order, 1961 (S.I. 1961 No. 355), in force on 4th April, amends the County Court Fees Order, 1959, so as to increase certain fees. Minor drafting amendments are made in respect of two other fees.

The fee on entering a claim for the recovery of a sum of money will be as follows:—

				Amount of Fee
For the recovery of a sum of money—				
not exceeding £1	..	..	..	3s.
exceeding £1 but not exceeding £2	..	..	..	6s.
" £2	"	"	"	9s.
" £3	"	"	"	12s.
" £4	"	"	"	15s.
" £5	"	"	"	18s.
" £6	"	"	"	21s.
" £7	"	"	"	24s.
" £8	"	"	"	27s.
" £9	"	"	"	30s.
" £10	"	"	"	32s.
" £11	"	"	"	34s.
" £12	"	"	"	36s.
" £13	"	"	"	38s.
" £14	"	"	"	40s.
" £15	"	"	"	42s.
" £16	"	"	"	44s.
" £17	"	"	"	46s.
" £18	"	"	"	48s.
" £19	"	"	"	50s.
" £20	"	"	"	55s.
" £30	"	"	"	60s.
" £100	"	"	"	80s.

The fee on entering a claim for the recovery of land together with a sum of money will include 2s. (formerly 1s.) for every £1 or part thereof of the money claim.

The fee on the issue of a warrant for possession is increased from 10s. to £1, and the maximum fee where the warrant is for the recovery of a sum of money in addition to possession is increased from £3 to £4.

The fee on the issue of a judgment summons is increased to 3s. for every £2 or part thereof for which the summons issues, and the maximum is increased to £2.

The fee on the issue of a subpoena is increased from 1s. to 2s.

## "MY LORD" NO LONGER

By the Courts of Justice Bill of Eire judges on the Bench are no longer to be addressed as "My Lord" but will receive the Eire salutation "a Breithimh."

## CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

### Streamlining Conveyancing

Sir,—Through pressure of work I have only just seen the letters from Mr. R. H. Hinton in your issue of 24th February and from Mr. R. T. Oerton in your issue of 3rd March dealing with the question of recital of the will of the testator whose executors are conveying.

In August, 1944, the Council of The Law Society published an Opinion that the will of a testator who died after 1925 ought to be abstracted to the extent only of the appointment of executors. At my suggestion, the Manchester Law Society wrote to The Law Society disagreeing with this and maintaining that only the death and probate need be abstracted. As a result, the Council of The Law Society (after, I believe, taking leading counsel's opinion) published a revised Opinion dated 14th December, 1945, as follows:—

"The Council are of opinion that on a sale by executors of their testator's real property all that need be abstracted, after showing the vesting of the property in the testator, is the Act of Probate. This contains all the evidence that the Purchaser needs and all that he should require."

Notwithstanding this, one still frequently finds purchasers' solicitors including in their draft conveyances a recital of the will and asking in requisitions for the date of the will. I always delete the reference to the will, refuse the information and reply that the will forms no part of the title. Even so, one frequently sees the purchasers' solicitor looking at the probate copy of the will when examining the title deeds.

With profound respect, I agree entirely with Mr. Hinton and disagree (on this point) with Mr. Oerton and such of the learned authors (beginning after 1925 with Sir Benjamin Cherry) who include references to the will in their books of precedents.

S. CLAYTON BREAKELL.

Manchester, 2.

## PRACTICE DIRECTION

### PROBATE, DIVORCE AND ADMIRALTY DIVISION

#### CONTEMPT OF COURT: NOTICE OF APPEAL: SERVICE ON PROPER OFFICER OF COURT

The President has approved the following direction.

The proper officer of the court upon whom notice of appeal is to be served pursuant to Ord. 58, r. 20 (1), of the Rules of the Supreme Court in the case of an appeal under s. 13 of the Administration of Justice Act, 1960, from an order or decision of the Probate, Divorce and Admiralty Division of the High Court in a probate or divorce cause or matter is the Senior Registrar of the Principal Probate Registry or in his absence the next senior registrar, and such service may be effected by leaving a copy of the notice of appeal with the Secretary, Room 48, Principal Probate Registry, Somerset House, Strand, London, W.C.2.

B. LONG,  
Senior Registrar,  
Principal Probate Registry.

7th March, 1961.

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## "THE SOLICITORS' JOURNAL"

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